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# Seminar Proceedings: Perimeter Security and the Beyond the Border Dialogue: Perspectives from the PNW-Western Canada Region: Special Report

Border Policy Research Institute

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## *Special Report*

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# Seminar Proceedings: Perimeter Security and the Beyond the Border Dialogue: Perspectives from the PNW- Western Canada Region

Proceedings of a seminar held June 20, 2011, in  
Seattle, Washington, jointly hosted by the  
Border Policy Research Institute and the  
Consulate General of Canada / Seattle

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The seminar was offered with assistance from the  
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Border Policy Research Institute  
Western Washington University  
Bellingham, Washington  
[www.wwu.edu/bpri/](http://www.wwu.edu/bpri/)

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## PREFACE

### *Perimeter Security and the Beyond the Border Dialogue: Perspectives from the PNW-Western Canada Region*

The Harper-Obama Washington Declaration of February 4, 2011 stated: “to preserve and extend the benefits our close relationship has helped bring Canadians and Americans alike, we intend to pursue a perimeter approach to security, working together within, at, and away from the borders of our two countries to enhance our security and accelerate the legitimate flow of people, goods, and services between our two countries.”

As of June, 2011, there were no details on what “perimeter security” might look like. What was clear is that whatever form it takes will likely depend on the Ottawa and Washington, DC intergovernmental *Beyond the Border Working Group* processes which have been tasked to solicit input from government, industry, academics and other stakeholders.

With this background, the Border Policy Research Institute at Western Washington University (with the assistance of the Canadian Consulate General, Seattle) assembled a group of academics and policy professionals at a seminar in Seattle on June 20, 2011. The goal of the seminar was to present perspectives on a perimeter security strategy and to position these deliberations vis a vis the *Beyond the Border Working Group* dialogue.

Among key questions participants were asked to address were:

1. How can perimeter security be conceptualized and operationalized to fit changing economic, security and political realities at the Canada-US border?
2. What lessons might be learned from previous strategies undertaken (e.g., SPP), or other models (e.g., Schengen) that can inform this process?
3. What Pacific Northwest regional concerns, issues and processes should be taken into consideration in developing a perimeter security strategy? Is there a regional component that should be incorporated into such a strategy?
4. What practical operational or programmatic initiatives could help inspection agencies move towards a perimeter paradigm, in light of the realities mentioned above (economic, security, political, regional)?

The seminar was intended to produce and transmit the “best thinking” on perimeter security by knowledgeable experts on Canada-US border issues from the Pacific Northwest area. It is hoped that the seminar deliberations will make an important contribution to the *Beyond the Border* dialogue.

The seminar format was designed to allow presentation of specific ideas with ample time for questions and comments from the audience. In addition to 9 invited speakers, a group of approximately 35 individuals representing border enforcement, business, government and academe attended the event, with many participating in the discussions following the speakers’ prepared remarks. Each of the speakers’ papers is reproduced in full. The discussions following the speakers’ remarks produced a trove of ideas and insights, which are presented in summary form as *Audience Comments and Discussion* following each paper in this report.

## ***Summary of Remarks Made by Chris Gregory, Public Safety Canada***

Members of the Canadian team that are working upon implementation of February's announcement of "Beyond the Border: A Shared Vision for Economic Competitiveness" have engaged in an extensive consultation process in recent weeks, including participation in over 100 meetings with interested stakeholders.

The announcement is essentially a policy statement outlining a vision for perimeter security and economic competitiveness that commits the two countries to the joint development of a detailed Action Plan, through the auspices of a Beyond the Border Working Group (BBWG). In Canada, the BBWG consists of Assistant Deputy Minister leads within relevant agencies. These ADMs will work with American counterparts to put ideas on paper and present a comprehensive draft Action Plan to the attention of leaders. Simon Kennedy, the Senior Associate Deputy Minister of Industry Canada, is Canada's lead on the bilateral discussions. Mr. Kennedy's counterpart in the U.S. is Dan Restrepo, a special advisor to the President with regard to Western Hemisphere, and a member of the National Security Council staff. Both the U.S. and the Canadian officials engaged in these discussions are committed to the concept that low risk traffic and trade at the land border should be not just facilitated, but accelerated, provided that appropriate security measures are implemented at the perimeter.

In Canada, officials have been seconded from federal agencies to work on this file, under the leadership of Mr. Kennedy. The agencies include: CBSA, Public Safety, Transport, Citizenship and Immigration, Foreign Affairs, Finance, and RCMP. The group is striving to have an Action Plan ready for submission to leaders by the end of the summer.

The Action Plan will identify concrete measures that will result in ambitious improvements to the status quo. Some measures will be near term (12-month), some medium term (2 to 3 year), and others will be longer term initiatives. There will be performance metrics tied to these measures so that governments and agencies can be held accountable by stakeholders. The emphasis is upon concrete changes to processes and programs.

There are four "pillars" in the announcement: addressing threats early; integrated law enforcement; critical infrastructure & cyber security; trade facilitation, competitiveness & jobs. Implicit within the pillars is a vision that measures within the Action Plan will relate not just to what happens at the perimeter (i.e., offshore, or at seaports and airports), but also within the perimeter (i.e., at the land border, and within each nation's jurisdiction).

One item that will be included in the Action Plan is the creation of a bilateral set of principles relating to the protection of privacy. These principles will apply to all items pursued through the Action Plan.

Following are examples of measures that are being discussed for possible inclusion in the Action Plan:

- Verifying traveler identity by conducting screening at the earliest opportunity
- Enabling the real-time sharing of traveler information through common technical standards for biometrics
- Implementing an integrated Canada-U.S. entry-exit system
- Support for emergency management in response to natural disasters
- Cooperating to identify, prevent, and counter violent extremism

- Cooperating on supply chain security to reduce compliance burdens, particularly for small and medium sized companies
- Improving, aligning and expanding programs for low risk traders
- Improving the benefits of trusted traveler programs
- Cooperating to modernize and better manage our border infrastructure
- Reducing red tape to lighten the overall burden of border rules
- Developing protocols to support the speedy resumption of trade following a potential border closure
- Building on existing bilateral law enforcement programs to develop the next generation of integrated cross-border law enforcement
- Expanding programs to cross-designate officers to jointly identify and interdict transnational crime
- Improving information sharing practices to allow law enforcement agencies to better identify serious offenders on both sides of the border
- Preventing physical and cyber disruptions of critical infrastructure
- Enhancing security of our integrated transportation and communications networks

Advice from stakeholders regarding any of the above issues and topics has been sought from the public, experts and stakeholder groups. The Government of Canada will be issuing a report summarizing the input received from stakeholders and the public.

Also mentioned by leaders on February 4 was the Regulatory Cooperation Council (RCC), which is a process entirely separate from what has been described above. The RCC's mandate is to better align our regulatory approaches and make it easier for Canadian and American firms to do business on both sides of the border.

## ***Redefining Borders: From Continental, to Perimeter and Beyond***

Solomon Wong, Intervistas Consulting

The process of redefining the term “borders” is an ever changing one, driven largely by the economic and social ties between countries. The U.S. and Canada have long pioneered innovation in this regard. A case in point is the start of air preclearance in Toronto in 1952, with full port-of-entry processing by U.S. authorities for flights to the U.S. Many other examples emerged over the years, including over half a million binational members in NEXUS, as well as enforcement programs to jointly tackle common threats. Now that the agenda again focuses upon policies regarding the perimeter around Canada and the U.S., there are lessons learned that are valuable to informing the ultimate vision – a seamless and secure border to facilitate legitimate trade and travel.

### **Origins of Continental & Perimeter Clearance**

The idea of a perimeter approach to Canada and the U.S. long predates the current Harper/Obama process. Before the first U.S. federal immigration station opened at Ellis Island in 1890, there was a strong dependency on Halifax and Quebec to be the first point of entry for U.S. immigration processing. Over time as hundreds of ports of entry were created inland and eventually by air, the system of processing evolved into the one we experience today: a check of documents and collection of forms augmented by potential referral to secondary processes (e.g. immigration, quarantine, etc.)

By 1999, a number of key stakeholders decided that the existing model needed to be revised significantly to deal with an expected growth in trade and travel. As a result, the Canadian Airports Council held a Perimeter Clearance forum in 2000 to gather major stakeholders in all modes and sectors to look at future opportunities for a Canada-U.S. approach. The challenges were as pronounced in 1999 as they are today: different treatment of narcotics/drugs, Driving Under the Influence (DUI) convictions, and a sizable dedication to national sovereignty.

In examining the activities of other bilateral and multi-lateral relationships, there was no shortage of examples. The evolution of Schengen in Europe supported a single aviation market. Land border checkpoints also were removed within Europe. However, moving to a single “Customs Tariff” and a single set of policies was not a reality that could be faced in 2000, and nor can it be in 2011.

A key concept within the Perimeter Clearance Strategy that evolved throughout 2001 and was integrated into the 32-point Smart Border Action Plan is the core principle to maximize process harmonization, but not necessarily strive for full policy alignment. A case in point: the rapid evolution of the NEXUS program to incorporate a single binational application form and fee structure, replacing earlier incarnations such as the PACE program.

### **A Negative Response**

The first phase of the Perimeter Clearance strategy was politically difficult. It was widely accepted as an objective by some, but largely decried in Ottawa as a “dirty word.” The negative response was driven by a political drive within the Canadian government to not acquiesce to every will of the U.S. government. One can look back and see a time when international security could not be advanced. Another possible reason for the obstacles faced by the Perimeter approach was a point in time when Canadian-made solutions were far more productive. One thinks of terrorism in North America as being born on 9/11; however the tragedy surrounding the attacks on Air India flights in Vancouver in 1985 propelled deep changes in security that Canada had already benefited from.

The significant investment both federal governments made in security in response to 9/11 heralded new ideas and technologies that enabled sizable improvements. From U.S.-VISIT biometric entry and visa fraud prevention, to the establishment of new transit flow processing, there was increasing recognition by 2006 of the value of Perimeter security solutions. The availability of large amounts of data from passenger and cargo manifests, for example, demonstrated the potential for joint risk assessments.

By 2006, Canadian support for a Perimeter approach emerged in response to increasing degrees of required border-related documentation. Policy positioning in Ottawa reached a point of calling for Perimeter type solutions. Around that time the so-called concept of “thickening of the border” was circulating as a major potential impediment to trade and travel. Meanwhile, though, support in Washington, D.C., for the Perimeter paradigm had lessened, with a significant fear of the inclusion of Mexico within the same threat solutions/policies as Canada.

In response, from 2006 through 2008 an update of initial concepts related to Perimeter was advanced, namely a report card on what progress had been made with respect to the original points in the Smart Border Action Plan. Greater “coordination” was advocated in the March 2008 update strategy, pointing out the need for greater collaboration within countries and between countries. Canada/U.S. would be first, and eventually broader geographies (i.e. Mexico) would be incorporated.

### **Opportunities for Perimeter Clearance**

So what are the opportunities in 2011 for a Perimeter approach within the Pacific Northwest? We are an increasingly interrelated set of economies, with a major cargo and freight gateway that bridges the gap between Asian and North American economies. The interrelationship is reflected in the practices of individual businesses, which are increasingly integrated in a complex network of suppliers.

- Biometric sharing: Canada, the U.S., and other countries have successfully shared biometric information in a number of ways: to manage irregular migration as well as accurately identify individuals. More is needed to ensure proof-positive identification of foreign visitors. The standard is already there with e-passports.
- One-stop screening and in-transit cargo: how do we ensure that goods that are cleared well away from Canada and the U.S. are accepted equally for transit purposes? The European Union recently recognized TSA screening as equivalent; surely we can do the same between countries.
- Mobility of professionals: Redmond, WA-based Microsoft depends on Vancouver, BC, as much as Vancouver-based Lululemon depends on suppliers in the U.S. Yet the friction in the system to allow people to cross within the class of support needed is sizable.

### **Challenges for Perimeter Clearance**

The experience in “Perimeter” as a construct is quite mixed and depends on the acceptance of core principles. Will this construct be resilient in the face of different threat issues? Will our activities be curtailed by a future apparent failure of a Perimeter system?

- Dynamic threat environment from outside and within: Needless to say, the evolution of the threat environment has major ramifications on all forms of commerce and travel. From within, there are also implications of so-called ‘radicalization’ – whether it be the “Toronto 18” arrests in 2006, or the Oklahoma City bombing.



- Mutual recognition of clearances: What security classification is sufficient for actors within the perimeter? In military and airspace, we already have mutual recognition of clearances and authorities. It is not a big deal that at times a Canadian citizen happens to be the individual in charge of binational military airspace.
- Automation and limited resources: Both CBSA and CBP are chronically understaffed. Are there ways to automate, streamline and combine resourcing?

### **Vision for 2011 and Beyond**

Nearly 60 years after the major paradigm shift in border clearance that was heralded by air preclearance in Toronto, Canada and the U.S. are poised to redefine how to further the integrated cultural, economic and political ties between both countries, as both continue to strengthen. The complexity of the threats to both countries has dramatically changed; the opportunities also abound.

At the end, the success of the Perimeter paradigm will be judged by whether we can establish an environment where goods or people from outside the region can be cleared into a single Canada/U.S. region, and have relative free flow movement between the two countries. In so doing, the lessened barriers to trade and travel will help ensure that we have an environment that maximizes our binational potential, much like Microsoft and Lululemon have done here locally in the region.

## Audience Discussion—Wong paper

**Comment:** Increasingly the regional economy in the PNW relates to services, which implies the need for cross-border mobility of professionals, and there are kinds of professions that have emerged *since* the establishment of the NAFTA TN visa. There also are new kinds of trade emerging, such as the *digital* transfer of content within the film industry. What are some solutions to these new problems of mobility?

**Wong:** There must be improvements in the way we approach risk management. We have succeeded in targeting the highest risk people through the means of watch lists, but there need to be advances with respect to the “no risk” and “low risk” people. The best examples of this rely upon the individual to be part of the solution, through advance information sharing. The TN visa issuance process could actually help streamline cross-border movements. Conversely, government could change the risk assessment standards applicable to programs such as NEXUS, in an effort to increase enrolment. More creative use of existing data could be beneficial. The U.K. Border Agency is one of the biggest consumers of U.S.-VISIT data, finding it useful for their own process of risk assessment.

**Comment:** With respect to cross-border commerce, a multitude of agencies ask for a mountain of data, and many of their requests are redundant, causing a “paperwork” burden for businesses. A single collection point might streamline things. The regulatory requirements are crossing over into the security realm.

**Wong:** A major new emphasis in the 2008 Perimeter Strategy document, as compared to the 2002 document, is with regard to coordination between agencies and between nations. Work is being done on this by agencies, with the American ITDS (International Trade Data System) being one example. More can still be done. If on a NEXUS application there was a box that could be checked indicating “share information from my passport file,” then there would not be the need for a person to provide an update to the NEXUS system when a passport renewal occurs. Doing all we can to streamline paperwork processes will help in the uptake of the processes we have provided for facilitation of trade and travel.

**Comment:** The earlier point regarding placing additional onus upon the individual is critical. In the leadup to issuance of EDLs, governments concluded that a voluntary enrolment process was the answer. People would be told “here are the benefits, and here are the consequences” (i.e., allowing personal information to be made available to border agents), and then given the choice of whether to enrol. Creating this transparent choice for the user actually caused government to also be transparent regarding the program’s characteristics.

**Comment:** Sharing of data is the most effective step that could be taken with respect to the task of streamlining cross-border mobility for both goods and persons. An example is third-country nationals resident in Canada. The Canadian government has biometrics for such folks, but can’t share the biometrics with USCBP. USCBP therefore collects biometrics over and over again at the border, each time the person enters the U.S. A workaround was found for the EDL—not the transmission of actual biodata, but of a unique identifier associated to biodata. There are similar workarounds that can be attempted for other obstacles. For instance, if a cargo pre-inspection is performed in Canada, any *enforcement* examination could be conducted in the U.S., getting around the issue of rights of refusal. But these workarounds are stopgaps, and the best path forward is ironing out things so that optimal sharing of data could occur.

**Comment:** We should find ways to allow labor mobility, particularly in these times of disparity within labor pools. If there is 9% unemployment in the U.S., coupled with a labor shortage in Canada, why not get Americans working up there, rather than seeking immigrants from offshore?

**Comment:** At the border on a busy weekend, there are still large backups in standard auto lanes, while NEXUS folks are getting smoothly across. Has anyone ever tried to find out why more people don't enrol in NEXUS?

**Comment:** In 2009 the BPRI and the Whatcom Council of Governments surveyed travelers to find out why they didn't apply for NEXUS. Some people didn't realize it was free for kids. Some didn't realize that the \$50 cost was good for 5 years of enrolment. Those are the two biggest misperceptions. WCOG is spooling up a new marketing effort aimed at correcting these misperceptions.

**Wong:** It is important to realize that NEXUS is not for everyone—that not everyone wants to go through the interview, etc. So how to improve mobility for people who don't want to voluntarily provide advance information? An example now ongoing at the Vancouver airport involves standard passports and declarations, but uses technology to scan the declaration for transmittal to Ottawa for risk management screening. So there will be different products for different kinds of users.

## ***Examining the ‘Beyond the Border’ Dialogue within the Contexts of International Relations and Schengen***

Emmanuel Brunet-Jailly, University of Victoria

This short paper is organized into four parts: First, we review conceptual definitions of Security, Borders and Borderlands and relate them to the Canada-US border; second, we consider specific regional and Pacific Northwest concerns; third, we ask what can be learned from Schengen that may help inform the Beyond the Border Dialogue? Fourth, practical policy ideas are suggested.

### **Conceptual Issues: What is ‘Security’ in the International Relations Literature?**

The traditional ‘narrow’ debate about security studies focuses on the enduring primacy of *military security* (Gray, 1994a and b; Buzan, Waever, deWilde, 1998). In this view, *Political actors* were central and *States as actors* were at the core. Security is *‘the study of the threat, use and control of military forces’* (Walt, 1991). The ‘wider’ debate about security points to sources of threat that are *not military*, and argues that ‘threats’ are indeed conceptualized in economic (Buzan, 1991, Luciani 1989), environmental and human terms (Deudney, 1990). According to Buzan (1998), the post-cold war period focused security studies on military and nuclear issues. Security was, then, about *‘anything that concerns the prevention of superpower nuclear war.’* But once the Berlin Wall fell the entire strategic community had to rethink its analyses. No longer was security predominantly about the East-West confrontation, but it was also about globalization and its economic, environmental and human fundamentals.

In other words, contemporary security analysts view security issues from varied perspectives; (1) In the military domain, security is about the state (and in general military security studies are about military affairs). This obviously is an incomplete view because in contemporary democracies state defense is only one function of the state. The military perform many functions that have little or nothing to do with security (deliver humanitarian aid, engage in emergency actions). (2) In the political domain, security is about sovereignty. It is a matter of state ‘ideology.’ States, and international organizations can be threatened by ‘rule changes’ for instance. (3) In the economic domain, the place of security is more complex and less clear. Security is about the sustainability of entire economies. Corporations and entire economic sectors may be at stake (witness the 2008 banking sector meltdown and government intervention/support in the US and Europe). (4) In the social domain, threats emerge from contentious collective identities—national, regional, religious, ethnic—that may develop against states. (5) In the environmental domain threats may be broadly understood to include safety and survival when faced with epidemics and human or natural disasters.

In summary, security was traditionally conceived as mono-sectoral and focused on the military, but more contemporary approaches are multi-sectoral. This suggests the importance of thinking clearly about the balance between sectors, cross-linkages, types of threats, actors and elements, which together have important implications for security policies. Security policies are more complex because issues identified as security threats are also more diverse; they are plural and multi-faceted in nature. Border and borderland security policies struggle with these new dimensions of security. Indeed, this new complexity is reflected in the various ways border and borderland policies are played out.

### **What Are Borders and Borderlands in the Scholarly Literature?**

Since antiquity there have been borders and marshes—line, zones, strips of wet land—which separate, divide, and otherwise intervene in mobilities and passages. Borders and borderlands progressively established authority, which at the dawn of the Middle Ages was basically about providing security and controlling territory. Today, however, Balibar (2002) suggests that borders ‘vacillate:’ in this view, borders need not coincide with the boundary-line itself, but are instead

elsewhere and multiple. Clearly, internationally recognized boundary lines still function as the '*Roman limites*' did. They mark the end of one 'sovereignty' and the beginning of another. It is where obligations and currency change, where tolls are paid, where customs are examined. But we are also witness to new and government designed norms that are internalized by citizen-subjects. These policies result in renewed production of referents of collective and individual identity, where rights are internalized with help of technological markers that replace language, ethnicity, and religion. In many ways borders are invisible at the boundary line. The contemporary borders are biometric-borders, markers and gates at the departure points of people and goods. These work in addition to other controls and zones of transit. Individuals negotiate individual rights of crossing; Population flows are held up before exit or entry. In this context, however, the trade of goods and services, and the environmental threats that cross borders are often able to resist control and cannot be stopped at the boundary, as illustrated by Chernobyl, 'Mad Cow,' the AIDS virus and CNN's images.

In summary, boundaries viewed conceptually no longer are the location and markers of superimposed sets of functions resulting from the exercise of sovereignty—military, tax and administrative powers, cultural, economic or environmental policies. Borders are vacillating because they are no longer easily localizable. They may be internalized; they may result from technological markers; or they may stem from social and economic factors that pledge legal rights. Border locations vary often because they are the result of preclearance policies. De-facto, borders are actually at 'home' where the goods, services or individuals prepare their journey.

Conceptually, our understandings of security in international relations and in terms of border and borderlands have undergone significant transformation in recent years, and particularly since the fall of the Berlin Wall in 1989. Both concepts have gone from meaning unitary phenomena to referring to multi-layered, complex, and multifaceted phenomena. As illustrated in the next section, this newly discovered complexity is reflected in the Europe of Schengen in a very particular way that looks at the security of its borders as a complex of socio-economic and environmental issues where policing, control and surveillance, and partnership have to work together.

### **Regional and Specific Pacific Northwest Concerns**

Regional concerns in the Pacific Northwest illustrate multi-sector security policy and vacillating border shifts discussed above. One implication is that the Pacific Northwest as a North-American cross-border region will have important and varied claims. Border security policies in the Pacific Northwest will need to take into account local and regional specifics as part of the articulation of local, regional, and, national or global security policy goals. An example is the regional 'enhanced driver's licence' as an alternative to the passport requirement promulgated by the Western Hemisphere Travel Initiative. The Integrated Border Enforcement Teams (IBET) also are a good illustration of this transformation where accommodating local/regional scale interests matter greatly to successful policy. National, let alone continental, security policies will not be effective without taking into account local and regional claims. The importance of local claims in developing border security policies has striking implications for transformation of top-down policy design to multilevel policy design where local actors are among other key players.

Specifically, because of the 'Perimeter,' a Pacific Northwest region prospective policy idea or proposal may include less 'boundary' markers across the current boundary that bisects the region, and more interactions which yield parallelisms in security policy, along with altered alignments between local, provincial officials and the respective federal governments. Also, security and boundary policy concerns may shift away from the Canada/US boundary line to the large inflows of goods and people entering the region at sea and airports.

In summary, it is reasonable to expect more multilevel policy-making, and at the same time more policy parallelism and policy alignments between Canada and US. Also, local and regional policy players will likely have a strengthened position in border security policy discussions.

### **What Can We Learn from Schengen that May Help Inform the *Beyond the Border Dialogue*?**

The Schengen experience is over 20 years old and while we can observe a fundamentally different administrative, organizational and political, cultural system at play, there are a few important ideas that may inform discussions of the Canada/US perimeter.

Indeed, important aspects of EU security policies include pan European programs that collect and distribute security and strategic information across pan European networks of security agencies at all levels of governments and among public private partnerships.

This started when the *European Union*, a federation of 27 European states, brought together several pre-existing initiatives and many new ones that were considered fundamental to EU security under the heading of *Freedom, Security and Justice* in December 1996. These include, for instance, initiatives such: as EUROPOLE that collects and analyzes information on international terrorism; EUROJUST that helps coordinate investigations and procedures (assistance, coordination, extradition) and sets ‘joint investigation teams’ across Europe; and AGIS, which helps with cooperation amongst national, regional and local police forces, judiciaries and other professionals to fight criminal matters, as well as offering pan-European training programs. The EU also harmonized legal offences, rule of competence and arrest warrants, and set up networks of expertise among law enforcement and intelligence communities across Europe. It is interesting to note that the European Commission funding commitment to this framework is limited to about 540 Million Euros per year, which stands at .5% of the annual budget of the EU.

What is known as ‘Schengen’ is also part of the *Freedom, Security and Justice Policy* pillar and implements a pan European border-security policy framework, also initiated by the European Commission. Originally, an “ad-hoc immigration group” had drafted a convention on immigration and external borders in 1989. But the Schengen agreement went further by dealing with control and surveillance of external borders. In Schengen, “*strengthening and protecting*” was understood as a “*compensatory measure*” for the elimination of internal borders (EU parliament). Following up on Schengen, the Laeken Council of December 2001 adopted a European Commission suggestion that (1) the EU Commission or an EU agency “*manage*” external borders including surveillance, analysis of risks, personnel, and equipment, and (2) the need for creation of a European Border Police, and a European Border Council. Shortly, after Laeken, in June 2002, the European Border Council approved a broad policy framework on the “*Management of External Borders*” including agreements on joint legislation and operations that include training, repatriation, treatment of aliens, and cooperation with third countries. It also approved (4) the creation of ARGOS, a program that promotes cooperation between national administrations to encourage uniform application of community law, transparency, and efficiency, and in 2005, (5) the creation of a E.U. Agency for the Management of Operational Cooperation at the External Borders. This new agency is called Frontex (for *Frontieres Exterieures*). It is in charge of 42,672 km of sea borders and 8826 km of land borders around the Schengen countries. Frontex was intended to be an effective barrier to cross-border crime. Its mandate included risk analysis – information gathering, research and development, operational cooperation between member states and training to set common preparation standards for Europe’s 400,000 border guards, management of units of 700 staff for rapid crisis response capability, and

coordination of member states in joint operations. The budget of Frontex stands at Euros 87 millions, which is a fraction of the cost of Homeland Security that stood at \$56 Billion in 2010.

The second aspect of those European initiatives is found in the *European Neighborhood Policy* (ENP) launched in 2004. ENP are broad based policies that are meant to foster a ring of good neighbors around the EU. The stated goal is to “*Secure Europe in a Better World*” (European Security Strategy, 2003 p. 7) [because] “*Even in an era of globalization, geography is still important. It is in European interest that countries on our borders are well governed. Neighbors who are engaged in violent conflict, weak states where organized crime flourishes, dysfunctional societies or exploding population growth on its borders, all pose problems for Europe.*” The Commission also declared “*Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close cooperative relations*” suggesting that “*The European Union’s interests require a continued engagement ... through more effective economic, security, and cultural cooperation.*” (European Security Strategy, 2003, p. 8) and “*There cannot be sustained development without peace and security, and without development and poverty eradication there will be no peace. Threats to public health, pandemics, undermine development. Human rights are a fundamental part of the equation...*” (Report on the implementation of the EU Security Strategy, 2008, p. 7)

In brief, the ENP implemented multi-sector policies that link security and peace with human rights and environmental and economic developments issues. These multifaceted goals were reasserted in the constitutional Lisbon Treaty, which further committed the EU to the “*development of a special relationship with neighboring countries aiming to establish an area of prosperity and good neighborliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation*” (Art. 8, Lisbon Treaty).

Today, all sixteen neighbors of the EU – i.e. the 16 states that surround the 27 member states of the European Union – that is Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestinian Territory, Syria, Tunisia, Ukraine, and Russia - are signatories and beneficiaries of those agreements of good neighborly relations. These are called the *Neighborhood Policies*. Morocco is one of those states that have agreed to sign the Neighborhood Policies and its agreement with the EU is a good example of what is expected. Morocco is engaged in political dialogue regarding for instances human rights issues, democratization, the establishment of a Moroccan/EU parliament commission, assistance for local elections with a quota (12% women elected /versus 0.58% in elected office today), business and trade relations including import export issues, support for the creation of a Moroccan Development Bank, but also information exchanges on legal and illegal migrations, the Morocco Spain contention over Ceuta, drug trafficking, membership in the European Convention of cyber-crimes, and the European council cooperation on the training of judges. The European Investment Bank lent 654 million Euros to Morocco to implement those policies. All in all, the ENP funding stands at Euros 8.4 billion – for all 16 countries.

In summary, the EU policies have centralized information and programs to increase the collection and redistribution of security information on a wide area of issues through pan-European networks of public and private agencies that are trained to comply with standards and procedures. Second, the EU policies bridge security with many other issues including democracy, human rights, environmental and economic development, and social issues.

### **Lessons and Policy Ideas? (Stated as Research Hypotheses)**

1. Security is multifaceted – security policies have to become multifaceted and multi-sectoral as well. This includes multi-tier-level partnerships.
2. Borders are vacillating – strengthening a boundary line is much less important than focusing on points of entry/exit of goods and services, and of individuals.

3. Technological markers shift the focus from ethnic, religious and linguistic determination to individualized rights.
4. Preclearance of individuals / rights to cross borders bridges both control of flows at external points of entry and boundary line control issues
5. More policy parallelism and policy alignments should result from Canada and US interactions and policy making, and this should be substantial and visible in the Pacific Northwest.
6. The position of local and regional policy players should be strengthened.
7. The land border cutting across the regions should soften (specifically in the Pacific Northwest)
8. The sea border along the region should harden. This should be tangible at sea and air ports of entry (specifically in the Pacific Northwest)
9. Continental concentration and formalization of security information will rise (EU experience)
10. Standardization of diffusion of security information across specialized and trained networked organizations will rise (EU experience)
11. Continental coordination of security policies will increase (EU experience)
12. Complexity and diversity of policy makers involved will increase (EU experience)
13. Borderland region-based policies will rise – at sea in the Pacific Northwest (EU experience)
14. Canada-US policy parallelism will increase, and include greater policy arenas (EU experience)
15. Canada-US policy makers will increasingly engage with other neighbors of the North and South, to work on security policies (EU experience)
16. Canada-US policy makers will broaden the spectrum of policy discussions, yet all will have security at their core (EU experience)



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## ***The Challenging Parameters of the Border Action Plan***

Alexander Moens, Simon Fraser University & Fraser Institute

### **Introduction - The Decade Long Transition from a ‘Risk Management’ to a ‘Perimeter’ Strategy for North American Continental Security: Contrasting the Smart Border Declaration of 2001 and the Border Action Plan of 2011**

The first major joint initiative undertaken by the Canadian and American governments in the aftermath of 9/11 was the signing by former Deputy Prime Minister John Manley and past Director of Homeland Security Tom Ridge of the Smart Border Declaration and Action Plan on December 12, 2001. The Smart Border Declaration could be characterized as a ‘Risk Management’ approach to securing the Canada-US border, intended to screen for, identify and obstruct the entrance into the US of individuals and freight flagged for posing a security risk. The *Action Plan for Creating a Secure and Smart Border* contained 30 working directives divided into four main ‘pillars’. The first and second pillars comprised securing the flows of peoples and goods respectively, arriving in Canada and the United States. The third pillar comprised a commitment to securing and modernizing border infrastructure while the fourth pillar called for the coordination and sharing of information in support of the first three objectives (Department of Homeland Security, 2001, 2002).

The first two goals of securing the flows of peoples and goods were emblematic of the ‘Risk Management’ approach to border security. Securing the flow of people was described in the Action plan as a process whereby security risk would be identified before arrival in North America, while verifiable low risk travelers would be permitted to move through the border quickly and efficiently via the use of secured clearance programs.

The ‘Risk Management’ approach also described the goal of securing the flow of North American bound cargo. The Action Plan called for identifying high risk freight before it enters North America while simultaneously expediting the flow of pre cleared low risk goods. More specifically, the Action Plan required Canadian and American authorities to develop a common screening process for identifying cargo security risks before it arrives in North America and to adopt common security standards at production and distribution facilities. The plan also tasked authorities to work towards implementing a common process for clearing commercial cargo *at the border* and developing programs to expedite the flow of low risk goods by implementing procedures to clear goods *away from the border* itself whenever possible.

Finally, the Action Plan aimed to relieve congestion by upgrading and investing in border infrastructure to expedite movement of goods and people across the frontier as well as minimizing the potential threats of sabotage aimed at key pieces of North American infrastructure including airports, bridges and pipelines. The fourth pillar simply entailed a commitment by Canadian and American officials to coordinate and cooperate in working towards the attainment of the first three goals.

The responsibility for implementing the Smart Border Declaration fell on the CBSA, RCMP, and the Department of Foreign Affairs and International Trade (DFAIT), and the US Customs and Border Protection (USCBP) and United States Coast Guard (USCG) branches of the Department of Homeland Security (DHS) after the department was created in 2002. The Smart Border Declaration resulted in some notable accomplishments for North American security. Amongst the declaration’s foremost successes was the official sanctioning of the Integrated Border Enforcement Teams.

Almost a decade later, a renewed push towards further improvements in the North American security regime involved not only a refinement of the ‘Risk Management’ approach, but also a reorientation towards a ‘Continental Security Perimeter’ approach. This new perimeter approach was

embodied in the commitments of the Canadian and American governments to a new 'Border Action Plan'. The new approach was articulated in a joint declaration made by Prime Minister Stephen Harper and President Barack Obama on February 4, 2011 outlining their '*shared vision for perimeter security and economic competitiveness*'. The shift towards a continental perimeter is intended to enhance the effectiveness of the security regime guarding North America while taking measures that assure a hospitable environment for the promotion of continental trade.

Though the joint declaration continued to incorporate some of the principles that underpinned the risk management approach, a reorientation towards securing the continent based on a 'Continental Security Perimeter' was a key element being underscored in a reinvigorated effort to protect and promote North America. The jointly administered perimeter would necessitate fusing together the misaligned and overlapping regulations, bureaucracies and agencies that currently administer the passage of goods and peoples crossing into Canada and the US. Towards this end, the *Border Action Plan* introduced a new focus on '*four areas of cooperation*'. The four '*areas*' include (1) addressing threats early, (2) trade facilitation, economic growth and jobs, (3) integrated cross border law enforcement and (4) improving on critical infrastructure and cyber security (Government of Canada, 2011a).

The need to prevent security threats from infiltrating North America requires foremost a shared recognition and assessment of potential external threats. After arriving at a common understating of the threat climate, Canadian and American planners should facilitate the timely sharing of information and intelligence to expose and impede emerging threats, develop a unified entry and exit standards for screening travellers arriving in North America, jointly adopt the latest security enhancing technologies and formulate integrated strategies to tackle natural and man made calamities if they materialize.

In order to promote trade and economic growth in North America, the Border Action Plan commits the Canadian and American governments to work together in removing obstacles to North American economic integration. More specifically, the Border Action Plans calls on the relevant agencies, in both Canada and the US, to increase investment in the infrastructure required to relieve congestion at the border. Given the significant costs entailed by the uncertain and lengthy wait times characteristic of certain border crossings, the Canadian and American governments have acknowledged that expanding the network of roadways, bolstering man power and human resources at and between ports of entry and enlarging border crossing facilities are key imperatives.

Improving infrastructure and the way it is administered may include the construction and joint administration of more lanes at border crossings, appointing joint committees to oversee infrastructure development and the sharing of information to expedite the movement of cross border traffic. Further aspects of easing border crossing congestion for goods and peoples would entail the expansion of trusted traveller programs, the development of a joint cargo screening strategy and the harmonization of existing customs practices and regulatory standards at the border. In general, the two governments have committed to seek out and pursue any opportunity for harmonization of currently existing, and proposed, programs, practices and administrative procedures at the shared border. The broad objective is to lower the costs incurred by legitimate businesses engaging in cross border commerce.

The third objective commits the Canadian and American governments to further integrating bilateral law enforcement efforts. Wider and deeper integration should entail the development of comprehensive cross border law enforcement arrangements to identify and interdict the smuggling of contraband by organized crime and the entrance of potential terrorists seeking to infiltrate North America from abroad and attack it from within. With more integration of cross border law

enforcement agencies in mind, the plan calls for facilitating the sharing of relevant information, including exit data and the development of new joint cross border law enforcement initiatives.

The final objective declared in the Border Action Plan is the intention to prevent possible attacks on physical and cyber/electronic infrastructure and to recover from an attack that proves successful. In order to do so, the Canadian and American governments seek to secure key pieces of physical and ‘virtual’ infrastructure, especially those pieces of infrastructure heavily utilized by government agencies in the US and Canada, and those that are indispensable to a flourishing North American economy. To facilitate this goal, the Border Action Plan commits the Canadian and American governments to work in partnership in securing “our use of air, land, sea, space and cyberspace, and enhance the security of our integrated transportation and communications networks” (Government of Canada, 2011b).

### **Determining the Strategic Vision of the Border Action Plan; Is it About Security or Trade?**

The first practical step required to advance the Border Action Plan is the development of a strategic vision or outlook. In essence, the challenge faced by Canadian and American authorities since 9/11 has been finding the correct balance between promoting trade and erecting effective security measures. Unfortunately, Canada and the US have somewhat divergent, perhaps even asymmetric, interests that may result in a figurative ‘*tug-of-war*’ between Canadian and American negotiators with regards to the Border Action Plan’s strategic orientation and primary goals. The Canadian authorities will likely focus on lowering trade costs and facilitating cross border travel and tourism. Their American counterparts will likely underscore the security regime.

To ensure that the Border Action Plan yields the maximum attainable fruit, American and Canadian negotiators would ideally first agree on the plan’s basic outlook and orientation. There should be a meeting of Canadian and American minds regarding the relative emphasis on either trade or security if the Border Action Plan is to fulfill its potential. However, this scenario is unlikely. Instead both governments will proceed to satisfy their priorities and hopefully to agree to enough trade-offs to make progress acceptable to both.

### **The Quickest Route to Building a Continental Security Perimeter Would Entail Taking the “Big Bang” Expressway: Is the “Big Bang” Open to North American Negotiators?**

Constructing an effective continental perimeter is a vast undertaking. Simply drafting the continental perimeter accord within the framework of the Border Action Plan is sure to prove a most daunting task. There are two possible avenues to the design and implementation of any future perimeter agreement; the ‘Piecemeal’ side street and the ‘Big Bang’ expressway. The myriad of agencies, on both sides of the border, responsible for administering customs and cross border trade, immigration, law enforcement and many other aspects of border management will need to come together in numerous partnerships, linkages and trade-offs to implement whatever initiatives ultimately emerge from the Border Action Plan. Organizing the array of initiatives that will ultimately emerge from the Border Action Plan as separate and disjoint undertakings may result in a misappropriation of resources, superfluous initiatives and ultimately to a disorganized web of programs and procedures that overlap in some respects while leaving exposed gaps in other areas. As such, though the piecemeal approach can advance the Border Action Plan’s agenda, it is unlikely to do so in an effective and efficient manner.

In contrast, utilizing a ‘Big Bang’ approach is more likely to result in a clear, coherent and unified plan for implementing the initiatives that will come to form the building blocks required for the construction of a continental security perimeter. The Canada-US Free Trade Agreement (CUFTA)

was negotiated in such a manner and so was the NAFTA accord. In this round, both governments would seek an overall deal on regulatory cooperation on the one hand and perimeter security on the other. I have outlined some of the basic ingredients for such a big bang approach in the NARSA concept which stands for a North American Regulatory and Security Area. Of course, the first step would be a Canada-United States Regulatory and Security Area (CURSA) which might in time lead to the inclusion of Mexico. The 'Big Bang' approach would address all of the disparate issues surrounding the construction of a continental security perimeter in one fell swoop.

The 'Piecemeal' method, in contrast, will likely result in a continental security perimeter that in practice constitutes little more than a continental security patchwork; an amalgamation of incongruous, independent and possibly overlapping security arrangements instead of an intricately woven tapestry.

Unfortunately, policy makers and negotiators who favor utilizing a 'Big Bang' approach may find that the current political climate is prohibitive, with little reason to believe that the climate will become more embracing of a 'Big Bang' approach anytime in the foreseeable future. The deep rooted tendency of Canadian public opinion to oppose any perceived relinquishing of sovereignty over policy making to American interests will likely preclude use of the 'Big Bang' expressway. At the same time, the US Congress does not look interested in approving a big accord and the clock is running out for the Obama administration to take on such a commitment in this term.

The reality is that Canadian negotiators and their American counterparts may be bound to a 'Piecemeal' approach as the default course of action. Taking the 'piecemeal' side street implies using the traditional approach to joint Canada-US policy development whereby independent efforts aimed at cooperation and coordination are manifest within federal, provincial and functional areas. The 'Piecemeal' approach is vulnerable to the possibility that policies governing customs and trade, immigration, border security, law enforcement and so forth be developed independently, will not naturally coalesce with one another and will ultimately be implemented in relative isolation. In essence, utilizing the 'Piecemeal' approach means that the continental security perimeter will initially be constructed by way of incremental policy adjustments made at multiple levels within the multiple agencies, each charged with administering differing aspects of the continental perimeter.

If this prognosis materializes, a broad scale political accord, perhaps modeled on NAFTA, may only be attainable as the process of building a continental security perimeter nears its finale. Only at that point, might it be possible to fit together all of the loose pieces that had hitherto comprised the, unassembled jig-saw-puzzle like, North American security perimeter.

### **Regulatory-side Solutions for Promoting Continental Trade:**

In order to create an environment that promotes the integrated supply chain and continental trade, Canadian and American negotiators must look to establish commercial regulatory standards that are as similar as possible, if not identical, in those areas where regulatory convergence is feasible and relative easy to implement, at both the national and regional levels. Having *compatible product standards* or establishing a system of *mutual recognition* for commercial regulations can reduce the bureaucratic red tape and paper work that is currently needed to engage in cross border trade between Canada and the US.

Lowering the trade barriers and administrative costs resulting from incompatible product standards should be a key objective of the negotiations surrounding the Border Action Plan. There are extensive opportunities for promoting product standard compatibility, creating a system of mutual

recognition and even moving towards the outright harmonization of numerous commercial regulations. Regulatory areas that might prove useful targets for convergence are ample.

One key area for regulatory harmonization would entail a gradual move towards a common external tariff, adopting the lower tariff in effect between the two countries, starting with industrial products and then moving up the supply chain to final consumer goods. The foremost feature of any such move towards a common external tariff should be the elimination of the Rules of Origin process (and removing any other remaining trade barriers that still exist between Canada and the U.S.).

Regarding labor markets, one desirable policy to consider would be the liberalization of temporary labor mobility laws for Canadian and American citizens in increasingly larger categories of skilled labor. Another feature related to implementing a common labor mobility agreement would be the adoption of unified rules governing student and tourist visas for non-North Americans. Other opportunities for commercial regulatory convergence might include management and control of infectious disease and pandemics, joint efforts to control invasive alien flora and fauna species and the coordination of financial and accounting regulations.

There are also opportunities for regulatory convergence with regards to energy policy. Foremost, continental agreements can be signed to unify standards in energy efficiency for household and automotive products. A single Canadian-American regulatory regime on the permitting and regulation of oil and gas pipelines offers another area for possible regulatory cooperation. Conversely, divergence of regulatory policy is especially harmful in the energy sector. Misaligned policy in the energy sector may foster an anti-competitive environment where Canadian firms are inherently disadvantaged. The same is true for environmental regulations.

### **Is Canada Willing to Engage in a New Continental Approach to Security by any Means Necessary? Tightening the Security Suspenders While Loosening the Security Belt**

Canadian authorities are keen to pressure their American counterparts into loosening the security belt girding the Canada-US border that has been squeezing Canada-US bilateral trade since 9/11. The problem is that American authorities in turn may demand more perimeter security at first, followed by demands for more Canadian domestic security measures.

There are several aspects of the Canadian domestic security regime that can be redesigned to more closely resemble the American security initiatives already in place. This could involve revamping domestic law enforcement practices in various ways, including re-evaluating the permissibility of various electronic surveillance techniques, domestic intelligence gathering methods, the issuing of arrest warrants, and harmonizing the requirements for lawful search and seizure. Another useful area to consider for increased convergence within the domestic security portfolio entails the enactment of similar security screening in immigration laws. A common intelligence interface or database might also be developed to facilitate the sharing of relevant information that can strengthen the operational capabilities of North America's domestic law enforcement agencies.

The adoption of new domestic security measures in Canada that emulate measures already in place in the US would be controversial to say the least and would require a careful assessment of the implication on the Canadian Charter of Rights and Freedoms. Mutual recognition might offer an alternative avenue if Canada can show that its measures are at least as effective as the US measures.

The main risk for Canada in agreeing with the US to erect a continental perimeter is the possibility that the continental security '*suspenders*' will simply be added to the security '*belt*' already girding the Canada-US border. Maintaining the status quo at the Canada-US border will likely negate the expected benefits that should follow from the implementation of any comprehensive initiative aimed at



thickening the North American security perimeter. Unfortunately, there is a distinct possibility that North America may ultimately end up wearing an internal security belt while simultaneously adorning a pair of external security suspenders (Sokolsky and Lagassé, 2006). Securing a guarantee from the Americans to loosen the security belt dividing Canada and the US after a continental security perimeter is erected may prove to be one of the more difficult challenges facing Canadian negotiators.

### **One Desirable Security Initiative for Pulling up the Canadian Suspenders: Is there a Possibility of Introducing CA-VISIT?**

Though the US has not yet requested this, it may be useful for the Canadian government to consider adopting a Canadian program that parallels the already existing US-VISIT initiative. Developing a program similar to US-VISIT for non North American travelers arriving in Canada would constitute an important step towards the harmonization of Canadian and American security policies.

The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program was introduced in 2004 in order to help DHS collect biometric information from international visitors travelling to the US. The aim of US-VISIT is to help various law enforcement agencies and departments identify law abiding US-bound travelers, prevent identity theft and to ensure that visitors arriving in the US abide by the terms of their visa, namely the length of their stay in the US (DHS, 2011a).

The primary biometric technologies being utilized thus far for the program have been digital fingerprints scans and photographs, typically gathered when an individual applies for a US travel visa. The biometric information being amassed through the US-VISIT program can then be used to quickly identify current visa holders and the potential eligibility of visa applicants, to establish the true identity of those visiting the US and prevent identity theft, and to identify international travelers who have overstayed the time allotted by their visa. The data base of biometric information collected under US-VISIT is centralized and can be accessed by several US federal agencies and departments, including the Department of Justice, USCBP, the US Coast Guard, US Immigration and Customs Enforcement, the Department of Defense and the various intelligence agencies. DHS has been the primary agency charged with establishing and maintaining the US-VISIT program's Automated Biometric Identification System (DHS, 2011a, 2011b).

Because US-VISIT was mainly intended for travelers seeking a US visa, most Canadian citizens are exempt from the US-VISIT biometric requirements. Canadian permanent residents however are required to provide the requisite information to fulfill US-VISIT biometric information requirements (DHS, 2011c).

Developing a CA-VISIT program integrated with US-VISIT would pre-empt the possibility that Canadians would one day be required to submit the same biometric information, for recording in the US-VISIT database, now being demanded from most other US-bound travellers. US security agencies are increasingly suspicious of nationals arriving from travel-visa exempt countries. There is little assurance that Canadians will continue to enjoy their US-VISIT exemption indefinitely. The harmonization of visa requirement imposed on non Canadian and American nationals and the synchronized collection of their biometric information is precisely the type of initiative mandated by the Border Action Plan.

In many ways, the US has been moving towards an atomistic domestic security regime that focuses on individuals and individual threats. Canada might be compelled to follow this '*individualized*' approach. With this realization in mind, CA-VISIT fits snugly into the Border Action Plan's framework, agenda and vision.

## **Securing Air and Sea Ports of Entry**

Given the geography of North America and the nature of individualized (one person with a backpack) security threats, the erection of a continental perimeter constitutes the most logical approach to strengthening the security regime designed to protect the US and Canada. The security benefits of a continental perimeter follow from a basic recognition that Canada's entire land border is shared with the US and consequently, all third country nationals arriving in Canada must do so either by way of air or maritime modes of transport. Assuming that the main threats facing North America are not of an indigenous or domestic nature, the logical inference would be to focus on securing North America as a whole from possible external threats.

The following objectives will need to be achieved to move this perimeter level of security forward:

- One agreed set of rules for offshore passenger screening and no-board.
- One stop cargo screening for both markets
- Deeper integration of foreign intelligence data pertaining to the movement of people.

## **Is the Canada-US Border Already Securitized (or Militarized)? Is the Border Action Plan too Late?**

Widespread but anecdotal data suggests that North American tourists and commuters crossing the Canada-US frontier without prior enrolment in a trusted traveller program are experiencing growing discomfort with the entire procedure. Nobody has a right to travel to another country, however, the Canada-US border should not resemble a form of tribulation and punishment. Unfortunately, it appears that American officials, policy makers and politicians increasingly view the Canada-US border from a militarized perspective; through a soldier's eye.

There are many anecdotal manifestations of this new militarized mindset administering the Canada-US border. Foremost among these military inspired initiatives has been the introduction of Unmanned Aerial Vehicles (UAVs) into the skies above the northwest region (USCBP, 2010, 2011). Similarly, many Canada-US border crossings have come to resemble that infamous crossing which previously divided West and East Berlin, *'Checkpoint Charlie'*.

The militarized mode of thinking prevailing over the administration of the Canada-US border is already a reality. A reading of the recent testimony given by USCBP Commissioner Bersin to the Senate Subcommittee on Immigration on May 17, 2011 suggests that trade is secondary in the mind of this chief border official (DHS, 2011d). Similarly, a recent Fraser Institute report (Moens and Gabler, 2011) that delved into transcribed debates recorded on the floors of the US Senate and House of Representatives revealed that American politicians are deeply concerned with the perceived weaknesses of the Canada-US border.

To reduce the 'Chilling Effect' of border crossing, it would be advisable for those negotiators charged with drawing up the Border Action Plan to review the background training procedures currently being taught to new USCBP and CBSA personnel to determine how a more hospitable and welcoming approach to border administration and inspection can be ingrained.

## **Conclusion: Calibrating Regulatory Cooperation and a Security Perimeter**

The creation of a Regulatory Cooperation Council, within the framework of the Border Action Plan, charged with a clear mandate to find and exploit any opportunity that promotes deeper integration in the economic, regulatory and risk management spheres between Canada and the US, is undoubtedly a step in the right direction. Unfortunately, several previous attempts to integrate commercial regulations and security arrangements at the continental level have fallen short of their aims, notably the Security and Prosperity Partnership of 2005.



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## **Audience Discussion—Moens paper**

**Comment:** Already in Canada there is popular concern about instances in which Canadian officials deny boarding to passengers based upon an American watchlist. If a greater convergence between Canadian and American processes occurs, will there be a Canadian backlash?

**Moens:** There already is substantial militarization of the land border, with CBSA having followed the lead of USCBP. There will be significant Canadian public concern that the Beyond the Border effort will simply lead to Canada adopting American practices. The anti-American sentiment of Canadians will heighten this concern. Such populist concern might eventually undermine this new initiative.

**Comment:** At forums such as this, there is interaction between senior officials of USCBP and CBSA, but how often do the “troops on the ground” at a port get to meet with their counterparts? Might such interaction help counter the “chill” of militarization at the border?

**Comment:** Another type of “chilling” border interaction is Canada’s treatment of US citizens that have a DWI somewhere in their past, perhaps even decades ago. This can disrupt a pleasurable attempt to visit Canada, and perhaps in an embarrassing way if for instance a husband’s ancient DWI is revealed at the border, and his wife was previously unaware of the incident. A “rehabilitation” process exists, but it can take 180 days

## ***Declared Perimeter-goals Will Require Undeclared Approaches***

Hugh Conroy, Whatcom Council of Governments

### **Purpose**

This short paper responds to a call from Western Washington University's Border Policy Research Institute (BPRI) to give perspectives on perimeter security strategy with a focus on current economic conditions, regional concerns and opportunities in the Pacific Northwest, lessons from previous binational border facilitation strategies, and practical operational considerations.

### **Introduction**

The February 2011 Beyond the Border Vision (BBV) issued by President Obama and Prime Minister Harper states that the U.S. and Canada “intend to pursue a perimeter approach to security, working together within, at, and away from the borders of our two countries...”

It's notable that little of the supporting detail in the initial strategy statement aligns with common understandings of the word, “perimeter,” but rather, seems to define the term in more familiar themes of cooperation, partnership, and integration.

The phrase “perimeter security,” in the U.S.-Canada context, made an initial appearance just prior to the terrorist attacks of 9/11. Then U.S. Ambassador to Canada Paul Cellucci suggested that a shared focus on our shared perimeter could allow a reduced level of attention at our shared internal border – leading to the 49<sup>th</sup> parallel becoming more of a North American “main street” than the inspection point it was, even in 2000.

In contrast to those decade-old characterizations, the only indirect evidence in the BBV that either country may envision actions that could reduce the process at our shared border is the paragraph on an “integrated cargo security strategy.” The bulk of the BBV's advancement of a “perimeter approach” seems more about integrating existing objectives to the end of allowing at-border operations and transactions to be more efficient and effective—perhaps reduced in profile, but not in scope.

While seemingly less ambitious than pursuit of Schengen-type outcomes, it's not clear that meaningful accomplishments under this interpretation of perimeter-strategy would entail any less effort or less complex bilateral process—likely entailing coordinated legislative action by our governments.

To explore this further in the context of U.S.-Canada border operations on the West Coast, this paper will:

- Review some examples of operational changes that could be envisioned under the *Key Areas of Cooperation* section of the BBV.
- Consider steps that would be needed to implement suggested actions.
- Make initial observations about the mechanisms that exist to support implementation, as well as some of challenges.

An intended outcome of this discussion is to update our appreciation of our countries for identifying and initiating strategic policy changes *and* jointly advancing implementation.

### **Selected BBV Intentions that Could Further a “Perimeter Approach”**

Extracted from the text of the BBV, the actions listed below illustrate the current notion of a “perimeter approach.”

- 1) "...an integrated United States-Canada entry-exit system."
- 2) "...creative and effective solutions to manage the flow of traffic..."
- 3) "...binational port-of-entry committees..."
- 4) "...shared border management facilities and border infrastructure where appropriate..."
- 5) "...to integrate our efforts and where practicable, to work together to develop joint facilities and programs—within and beyond the United States and Canada..." [*this citation features a loose reference to "perimeter thinking."*]
- 6) "...build on success of current joint programs [NEXUS, FAST]... harmonizing existing programs... automating processes at the land border [*more e-manifest*]
- 7) "...an integrated cargo security strategy that ensures compatible screening methods for goods and cargo before they depart foreign ports bound for the United States or Canada..." [*This is strongest example of perimeter strategy as typically understood.*]

### **Possible Strategies from a "West Border" Perspective**

This section reviews several strategies that have potential application in the Washington State – British Columbia border region. Challenges to implementing such strategies will be reviewed in the following section.

#### ***Rail preclearance***

Not an exclusively western issue, it's a regional issue that has been under discussion and in negotiation-status for several years. Likely more poised for a successful outcome than other actions, it's conspicuously absent from the BBV—even though it would seem a good fit for the "perimeter approach." Foundational legislation exists in Canada and there is a precedential agreement between both countries for air pre-clearance. But will issues left over from the abandoned '05-'07 Buffalo-Fort Erie negotiations still present obstacles—issues revolving around rules of powers of arrest (search, evidence, etc.)?

#### ***Shared border management and facilities***

The *shared border management and facilities* intention is a broad category that could appropriately describe several specific examples of a BBV "perimeter approach" for the BC-WA region. Joint commercial-vehicle processing facilities could be considered for smaller ports of entry like the Lynden, WA – Aldergrove, BC port-of-entry. Joint development of other facility components could include shared veterinary-inspection facilities.

Pacific Highway and Sumas-Huntingdon both have large, empty parking lots that were constructed shortly before electronic cargo information requirements essentially ended the practice of parking prior to approaching primary inspection. Given their adjacency to the inspection facilities, these lots, both of which enjoyed binational funding, could offer real estate for improved distribution of operations and traffic flow.

One process which might be considered for re-location to the adjacent "parking lot" is VACIS screening (non-intrusive gamma-ray vehicle scanning). Typically done after primary inspection, VACIS can often cause a bottleneck in an already constrained space. If VACIS scanning could be performed pre-primary – and in the local example, in the country of departure – often while the vehicle would be in the queue, this could both save overall inspection time as well as mitigate a significant choke-point.

For both of the above, and other concepts of joint facility development, an important “perimeter strategy” would be for our countries to negotiate arrangements that allow such facilities to be constructed where it makes the most operational sense to do so rather than straddling the border itself (as has been done with the very limited number of existing joint-facility projects).

### ***Joint program development***

If joint programs are actually pursued in a way that goes beyond coordinating actions of existing programs, and strives to align programs in their formative stages, land-border planning and investment is a good example of where this could yield important, long-term benefits. A few recent examples of federal border inspection agency investment programs illustrate the potential benefits of a more integrated policy for investment in and operation of our inspection and transportation border infrastructure.

In 2009, U.S. Customs and Border Protection (CBP) received stimulus funding to rebuild CBP-owned facilities. But, while CBSA was interested in discussing which locations might make sense for joint facilities, a politically imposed high-speed project-delivery schedule left no room for this to be considered.

In 2010, Canada Border Services Agency’s internal review led to a decision to close several low-volume crossings. This announcement apparently took CBP by surprise leading to concerns that recent investments in the U.S. half of land-port locations could have been avoided.

Lastly, in 2011, the U.S. President’s budget included \$2.1 billion for border infrastructure. Again cast as stimulus funding with a very aggressive timeline (if approved), CBP representatives in April 2011 were already confident that time constraints attached to the economic-stimulus objectives of spending the money would prevent joint-facilities from being considered.

One type of cross-border program development that is absent from the BBV declaration, in light of past North American declarations on the topic, is short sea shipping and the associated regulatory topic of cabotage laws. Cabotage laws currently prevent marine carriers from serving a binational trade-lane in the same way they would serve a domestic route – with pick-up and drop-off service along the entire route. This seems like a good fit with a “perimeter approach,” but the political interests involved in addressing new standards are very large on both sides of the border.

## **Challenges and Resources**

### ***Challenges to shared border management strategies***

As was described by the 2009 GAO report on the abandoned ‘05-‘07 pre-clearance negotiations, any of these inspection-related processes would likely “re-raise” concerns about either country’s officers being able to act on information gathered outside of their jurisdiction – for reasons of evidence; being able to detain people or cargo of interest; or discrepancies between U.S. and Canadian constitutional requirements for information gathering and/or arrest. The GAO report cited suggestions that a near-border land-swap could address these issues but that would obviously be a cumbersome (if not blunt) solution. But, in the same way that ports-of-entry themselves are legally-defined spaces in which travelers and traders cede some typical rights by virtue of their voluntary arrival (e.g., vehicles may be searched without probable cause), could not analogous “legal space” be binationally agreed to for border-inspection areas? This is essentially the notion of *accord processing zones* that has been suggested by others as a response to 1995 U.S.-Canada Accord on our Shared Borders

### ***Challenges to joint programming strategies***

The three border-station funding and closure announcements reviewed above illustrate some of the traditional challenges to better international, agency-level cooperation: competing agendas (stimulus vs. system optimization) and agencies, operating independently from overarching binational policy objectives, and thus foregoing opportunities for improved capacity and protocols.

More generally, it would be difficult for agencies to establish internal programs that focus on the benefits of and procedures for coordinating investment strategies for the infrastructure that constitutes our physical, cross-border connections.

### ***Resources and possible approaches for supporting BBV implementation***

This section takes stock of the resources that are available for our countries to support realization of the BBV. In addition to the BBV's establishment of the Beyond the Border Working Group (BBWG), many sources of institutional capacity have emerged over the last decade and are worth noting here.

The challenges for the BBWG will be to effectively coordinate federal agency strategy development and implementation both domestically and internationally. But to reach the level of achievement articulated in the BBV (similar goals as articulated by declarations that preceded the BBV), there must be an improved ability for the BBWG executive-branch agencies to engage, when necessary, our countries' legislatures in coordinated actions to affect mutually acceptable changes in law. So while the BBWG is a critical resource, the question remains, "Can the BBV or the BBWG include a set interface with U.S. and Canadian legislatures so that, as issues of authority are encountered, the option of coordinated, legislative adjustment can be evaluated, and if agreeable, pursued?"

Agency-level working groups also provide another import source of capacity for new models of border facilitation. A good example is the U.S.-Canada Transportation Border Working Group (TBWG). TBWG (for more information see [www.thetbwg.org](http://www.thetbwg.org)) provides an important source of expertise and can sustain commitment to objectives that, by their nature, require efforts that often last longer than the terms of elected officials. But again, while the emergence of structured binational interagency cooperation is a critical development in our shared capacity to do things differently, development of mechanisms to facilitate complementary alignment of underlying legal authorities remains a missing piece. To the U.S. and Canada's advantage, both countries are representative democracies. But as two sovereign states who have formally articulated an interest in integrating procedures, it is reasonable to expect that some underlying legal definitions will need to be aligned, too. But if a will and procedure to engage *both* administrative and legislative branches continues to be avoided, agency managers conducting early work to identify feasible improvements will, understandably, limit proposals to what can be done under existing authorities. While some notable efficiency gains have and will be made this way, it is hard to see how real progress towards goals like improved pre-clearance, joint-facilities, and various forms of information sharing will come to fruition.

Another interesting development over the last several years is the growing profile of executive level state-province strategic partnerships. The best example to expand on for this paper is obviously the partnership between the governor of Washington and premier of British Columbia. Having established the first memorandum of cooperation in 2005 and built on the framework with successive issue-specific memoranda and secretary-level committees, the governor and premier updated the overall mechanism with signing of the Framework for

Transportation, Competitiveness and Prosperity in October 2009. Along with the evolving institutionalization of Washington-British Columbia government collaboration, the framework has been an effective source of political focus on issues such as approval of enhanced drivers' licenses for the U.S. WHTI identification requirements and extensions of Canadian facilitation of cross-border passenger rail service (Amtrak Cascades). Notably, the BC-WA framework has been effectively sustained through the recent transition to a new government in British Columbia. Currently, the political and agency leadership working on actions under the framework (such as the BC-WA Joint Transportation Executive Committee) should be seen as a potentially important source of political capital available to support our federal governments' progress on the BBV.

At various scales, there are also smaller-region cross-border planning groups. The International Mobility and Trade Corridor Project (IMTC) is a cross-border planning coalition focused on the four main ports of entry between Western Washington and Lower Mainland British Columbia. Facilitated by a lead-agency, the Whatcom Council of Governments, federal inspection agencies, state and provincial transportation agencies, local governments, industry, and non-governmental organizations have voluntarily collaborated on the identification of needs, improvements, and funding partnerships for investments in the regional cross-border transportation system. More information about IMTC is available at: <http://www.wcog.org/Border>. Such regional cross-border planning coalitions are an important asset to the success of the BBV. First, the BBV lists as an intention the creation of binational port-of-entry committees. IMTC seems like a pre-existing example of a localized working group involving similar agencies and working on similar issues as the agencies and issues invoked by the BBV. Secondly, binational, interagency and public-private collaboration at the regional level is an essential part of operational innovation and problem-solving. Concurrent involvement of localized expertise, along *with* high-level policy-making (such as the BBV) *and* legislative involvement, is a more robust strategy for exploring what is operationally possible and tactically effective. Then, if new approaches are agreed to, localized planning and coordination committees can also (as shown by projects coordinated through the IMTC) improve financial feasibility and product quality.

### Schengen?

The institute that solicited this paper asked the author to consider the BBV in light of the Schengen agreement for cross-border travel for many European countries. As was mentioned at the beginning of the paper, the BBV text does not indicate an appetite for an uncontrolled internal border (such as is the case in the 25-country Schengen area) nor does it indicate an interest in creating the level of institutional structure behind Schengen (currently administered and regulated under the laws of the European Union).<sup>1</sup> But similar to Schengen, the goals articulated in the BBV are not easily attained. Full realization will require intergovernmental dialogue, mechanisms, and procedures that are not currently acknowledged – not declared in the declaration. So while many will say “We’re not doing anything like Schengen here...,” making progress (at long last) on goals listed (many relisted) in the BBV will not necessarily be easier to achieve. And that’s okay. As reviewed above, the last several years have seen the emergence of new types of formalized dialog which should be seen as new and deeper sources of institutional capacity for the advancing U.S.-Canada border facilitation.

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<sup>1</sup> [http://ec.europa.eu/home-affairs/policies/borders/borders\\_schengen\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_schengen_en.htm)

## Audience Discussion—Conroy Paper

**Brandt:** There is great utility garnered from the input of local stakeholders with regard to the infrastructure and processes used at a given port. The IMTC has been beneficial here in Blaine. The idea of shared veterinarian facilities is appealing because the inspectors don't have to be armed (eliminating the problem of carrying firearms across the border). While some kinds of inspections are universal in nature (e.g., searching for bombs or drugs), many kinds are associated with trade compliance, and trade regulations are often country-specific, so this might complicate any attempt to locate U.S. officers within an inspection zone in a foreign country.

**Comment:** Trains traveling from Canada to the US through the Detroit tunnel pass through a USCBP VACIS inspection in Canada, so a precedent exists for the notion of locating an inspection post in Canada. So, seemingly a VACIS could be located in Canada in the parking lot immediately abutting the USCBP Pacific Highway commercial POE. Trucks would pass through VACIS prior to reaching the PIL, thus curing the existing VACIS bottleneck that occurs immediately post-PIL at Blaine.

**Comment:** USCBP staff would need to work in Canada, then, because of the need to operate the machines and choose which trucks to inspect. Those staff would then be operating within a different legal environment. For example, in Canada there is a greater right of privacy associated with the odor emanating from a truck, so K9 units can't be used in the same manner. Another issue is that in Canada a person generally has the right to withdraw from the border (and its associated inspections). So, if the VACIS showed something suspicious, the truck could simply turn around and drive away unimpeded. In the preclearance arena (such as at airports), if US officers notice a problem, their recourse is to refer the matter to Canadian colleagues (RCMP, CBSA), who then move forward consistent with Canadian law, which might mean that the person is allowed to withdraw from the border and the inspection. With the rail inspection in Detroit, there is the practical fact that a train can NOT turn around—it proceeds onto US soil, where a stop can legally be made.

**Conroy:** With respect to these issues of preclearance, the GAO report that examined the aftermath of the breakdown of the Fort Erie / Peace Bridge preclearance plaza included a suggestion that a land swap would be a possible solution—i.e., legally transferring title and jurisdiction from one nation to the other. A second approach is that of a legislatively established (by both the U.S. and Canada) “international processing zone” within which there is a legal framework distinct from that found elsewhere in the abutting nations. A person choosing to enter such a zone might therefore no longer have the right to withdraw from the zone once targeted for attention.



## ***Consular Processes as Impediments to the Cross-Border Mobility and Legitimate Flow of People Across the U.S.-Canada Border***

Greg Boos, Cascadia Cross-Border Law

The Harper-Obama Washington Declaration of February 4, 2011 states: "...to preserve and extend the benefits our close relationship has helped bring to Americans and Canadians alike, we intend to pursue a perimeter approach to security, working together within, at, and away from the borders of our two countries to enhance our security and accelerate the legitimate flow of people, goods, and services between our two countries. We intend to do so...in ways that support economic competitiveness, job creation, and prosperity."

This paper suggests that it is time to reexamine many of the functions performed by both the U.S. consulates in Canada and the Canadian consulates in the U.S.<sup>1</sup> Consulates as they currently exist are pre-industrial constructs<sup>2</sup> operating (in the case of the U.S. and Canada economies) in post-industrial societies, and the designation of certain cross-border tasks as their exclusive or primary domain impedes U.S./Canada integration and prosperity. In short, certain tasks exclusively performed by the consulates should be transferred to each country's respective border agency - Customs and Border Protection (CBP) for the U.S. and Canadian Border Services Agency for Canada (CBSA) or other agencies to be situated at or near the border - at least as the tasks pertain to U.S. and Canadian citizens.

This suggestion is counterintuitive in the sense that the wisdom du jour suggests that all border clearance activities should occur away from the border whenever possible. But the mere fact that adjudicatory tasks that enable persons to cross the U.S./Canada border occur away from the border does not necessarily mean that those tasks are performed efficiently in promoting the legitimate flow of people; rather, secure borders that facilitate efficient cross-border travel depend on efficient systems that effectively allocate resources in a fashion that meets both reasonable consumer expectations and legitimate security concerns.

A corollary to this thesis is that removing certain functions from the consular domain frees the consulates to provide critical services that contribute to border mobility for other end-users, i.e. third-country nationals, in a more rapid fashion. For example, the U.S. Consulate in Vancouver's workload often makes it impossible for a third-country national in B.C. to obtain a timely appointment to apply for a visitor visa to the U.S.

As noted in a recent Congressional Research Service report,<sup>3</sup> the U.S. "...has 24 major nonimmigrant visa categories, and 87 specific types of nonimmigrant visas are issued currently. Most of these visa categories are defined in §101(a)(15) of the Immigration and Nationality Act (INA). These visa categories are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15); for example, B-2 tourists, F-1 foreign students, ... H-1B temporary professional workers, J-1 cultural exchange participants, and S-4 terrorist informants."<sup>4</sup> By

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<sup>1</sup> The U.S. has consular offices in the following Canadian cities: Calgary, Halifax, Montreal, Quebec, Toronto, Vancouver, and Winnipeg. Canada has consular offices in the following American cities: Anchorage, Atlanta, Boston, Buffalo, Chicago, Dallas, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis, New York, Philadelphia, Phoenix, Raleigh, San Diego, San Francisco, and Seattle.

<sup>2</sup> See "Roots of Modern Diplomacy" in Wikipedia's entry on Diplomacy: <http://en.wikipedia.org/wiki/Diplomacy>

<sup>3</sup> U.S. Immigration Policy on Temporary Admissions, Ruth Ellen Wasem, February 28, 2011.

<sup>4</sup> The CRS report also notes that U.S. law on nonimmigrants "... dates back to the Immigration Act of 1819. An immigration law enacted in 1924 defined several classes of nonimmigrant admission. The disparate series of immigration

regulation “A visa is generally not required for Canadian citizens, except those Canadians that fall under nonimmigrant visa categories E, K, S, or V ...”<sup>5</sup>

### **Low Hanging Fruit: The U.S. E-Visa**

The E-visas are commonly called “Treaty Trader” (E-1), “Treaty Investor” (E-2), and “Specialty Occupation” (E-3) visas. E-visas are only available to nationals of those countries that have reached a qualifying agreement with the United States.

There are about 50 countries, including Canada, whose nationals may obtain E-1 and/or E-2 visas. Canada was granted the option of E-1 and E-2 visas in 1989 with the signing of the Canadian American Free Trade Agreement (CAFTA), and this option was extended to Mexico under the North American Free Trade Agreement (NAFTA). While Canadians are visa-exempt for all but four non-immigrant visa categories, §212.1(l) of the immigration regulations (“8 CFR”) specifically requires all aliens seeking admission as Treaty Traders and Investors to be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien in said category.

If the Canadian is already in the United States under another category, for example Visitor for Business, it is possible to apply to the United States Citizenship and Immigration Services (USCIS) for a change of status to E from within the United States. However, even if the Canadian changes his status<sup>6</sup> to Treaty Trader or Treaty Investor and then leaves the United States, he will still need an E-visa issued by a U.S. consulate abroad to re-enter the U.S., as CBP cannot admit a Canadian in E status unless he has a visa. The U.S. Department of State strongly believes that it, not the Department of Homeland Security (DHS), is the proper authority for adjudication of E-visas; accordingly U.S. consulates readjudicate E-visa cases from scratch, staunchly refusing to defer to USCIS change of status adjudications.

Only two of the U.S. consular posts in Canada process E-visas. As of January 3, 2006, the United States Consulate General in Vancouver processes E-visa cases for residents of British Columbia and Yukon. The United States Consulate General in Toronto processes all E-visa cases for the residents of Ontario, Alberta, Manitoba, New Brunswick, Newfoundland, NW Territories, Nova Scotia, Nunavut, PEI, Quebec, and Saskatchewan.

Consulates do not provide “just in time” processing services in E-visa cases.<sup>7</sup> A Treaty Trader or

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and nationality laws were codified into the INA in 1952. Major laws amending the INA are the Immigration Amendments of 1965, the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.”

<sup>5</sup> 8 CFR §212.1(1)(a)

<sup>6</sup> Generally speaking, if a nonimmigrant in the U.S. wishes to change from one nonimmigrant category to another without leaving, such as from visitor for business status to treaty investor status, the foreign national must file a change of status application with USCIS. Upon approval of the change of status, USCIS issues the nonimmigrant a Form I-797 reflecting the new status and its validity dates. The nonimmigrant may remain in the U.S. in the new status for the period of time reflected on the I-797, although the nonimmigrant, unless visa exempt, may be required to obtain a visa reflecting the new status prior to reentry if he travels abroad.

<sup>7</sup> NAFTA addresses 4 classes of non-immigrant business admissions. The U.S. classifies these as 1) B-1 (Temporary Visitor for Business), 2) TN (NAFTA-designated professionals), 3) L-1 (Intracompany Transferee), and 4) E-1/E-2 (Treaty Trader/Treaty Investor). B-1, TN and L-1 matters for Canadians can be processed at the border on a no appointment, same-day fashion. A Canadian B-1 applicant simply drives to the border and answers the questions the inspecting officer staffing the primary inspections booth asks him; if the inspecting officer believes the applicant is a B-1 he simply waves him through to the U.S. A Canadian TN or L applicant generally takes his lawyer-prepared documents to the border where they are adjudicated within an hour or two, and upon approval and payment of required fees, he leaves the border with a “work permit” for U.S. employment. Thus E-visas are the only class of business visa addressed under the NAFTA for which Canadians do not get “just in time” treatment.

Investor processing his application at a U.S. consulate in Canada completes an online questionnaire and presents a written submission in support of his application in advance of appearing at the consulate for issuance of his E-visa; he can then anticipate a 2 to 4 month wait for an appointment, at which time the consular officer compares the person presenting himself at the interview against the photo in his passport, and inquires about any unresolved matters arising from his review of the written submissions made in the case.

Delays in processing of E-visa cases provide a variety of logistical problems for the Canadian business community. Some of these problems follow:

- An investment for E-visa purposes can range from \$80,000 or less to many millions of dollars, and the investor's money must be "at risk" at the time he makes his application for the E-visa. A Canadian investing \$5 million on the purchase of a boutique hotel in Palm Desert needs to be on-site and managing the investment immediately after the close of the deal; even if the former owner(s) agree to stay on to manage the asset until the investor gets his E-visa, there is no guarantee that the former owner(s) will exercise due care in the management and care of the asset once the purchase has been made.
- The Department of State does not allow an appeal of an E-visa denial, and the U.S. Courts have upheld this decision; a businessperson whose visa application has been denied may have purchased a "pig in a poke" as he has a substantial asset in the U.S. and no means to manage it.
- The investor must travel to Toronto or Vancouver for issuance of the E-visa, and such travel presents an extra cost of doing business in the U.S., not to mention an inconvenient allocation of time.

**Recommendation:** As part of the Perimeter Security and the Beyond the Border Dialogue process, U.S. authorities should actively investigate making Canadians visa-exempt for E-visa purposes, a step that would effectively transfer primary E-visa jurisdiction from the Department of State to the Department of Homeland Security. Once this step has been taken, the Department of Homeland Security should allow processing of E-visas at U.S. Ports of Entry and at USCIS inland processing centers.

### **Low Hanging Fruit: The U.S. K-3 and K-4 Visas**

On December 21, 2000, the Legal Immigration and Family Equity Act (the "LIFE Act") became law. Among other things, this Act made available a new non-immigrant option available to spouses of U.S. citizens and their unmarried children under age 21 who are outside the United States awaiting processing of their permanent resident ("Green Card") petitions. Spouses of U.S. citizens are classified K-3 and their unmarried children under age 21 are classified K-4.

Pursuant to INA §101(a)(15)(K)(ii), there are three requirements for a foreign national to receive such classification:

- The principal foreign national must already be married to a United States citizen who has filed a family-based petition (Form I-130) on his or her behalf;
- The same United States citizen spouse must be petitioning on the foreign national's behalf to obtain a K nonimmigrant visa (Form I-129F); and
- The foreign national must be seeking to enter the United States to await the "availability of an immigrant visa." USCIS interprets this phrase to mean the approval of the adjustment of status

application or application for an immigrant visa.

K-4 foreign nationals must be unmarried and under age 21 in order to continue to meet the definition of "child" under INA §101(b)(1).

Under current processes, The K petition must first be filed with and approved by USCIS. This filing can be done upon proof that a Form I-130 has been filed in the case. Upon approval by USCIS, the K-3/K-4 foreign national must then obtain a visa through a U.S. consulate. As previously noted, although Canadian citizens are visa-exempt for most nonimmigrant purposes, they still require a visa for admission under the K classification.

USCIS generally processes K-3/K-4 applications simultaneously, and an approval for the K is normally obtained at the same time as I-130 approval. A Notice of Approval of the I-130 is sent to the National Visa Center, and once processing is completed there, the matter is transferred to the U.S. Consulate in Montreal<sup>8</sup> for final processing which will include an in-person interview by the "green card" applicant. Post-USCIS processing can take a year or more. Meanwhile, in theory, a Notice of Approval of the K-3 matter is sent directly to the US consulate closest to the K-3 where it can be processed in about 6 weeks time.

In theory, once a K-3 visa has been obtained from a consulate with jurisdiction over the case, the K-3 visa holder appears at a Port of Entry, and will be admitted for a period of two years. Similarly, K-4 dependents will be admitted for a period of two years or until the day before his or her 21st birthday, whichever is shorter. "Green Card" processing can continue with the US Consulate in Montreal or it can be transferred to the USCIS office in the U.S. where the K-3 holder and spouse reside. Those admitted to the United States as K-3 or K-4 nonimmigrants are authorized to work incident to their status, and may travel outside the United States and return using their K-3 or K-4 visas, even if they have filed for adjustment of status.

However as a practical matter, once USCIS makes an initial approval on the I-130, the Department of State declines further processing of the K-3 matter. As referenced earlier, USCIS generally adjudicates the I-130 and the K-3 petition at the same time. The bureaucracy effectively mandates that cross-border families wait perhaps a year or more longer than is necessary before unification in the U.S. A copy of a letter from the Department of State in one such case is attached as **Exhibit A**.

**Recommendation:** As part of the Perimeter Security and the Beyond the Border Dialogue process, U.S. authorities should actively investigate mandating that K-3 applications for Canadian beneficiaries receive priority processing by USCIS (or "just in time" processing by CBP at Ports of Entry), and that Canadians be made visa-exempt for K-3 and K-4 purposes. Cross-border marriage between Americans and Canadians is common and there is no valid reason why these cross-border families should wait a year or longer for unification in the U.S.<sup>9</sup>

### **Low Hanging Fruit: TRP Processing for Entry to Canada**

Section 36(2) of the Immigration and Refugee Protection Act ("IRPA") renders a foreign national inadmissible to Canada on the grounds of criminality for:

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<sup>8</sup> Montreal is the only U.S. consular post in Canada that processes permanent resident matters.

<sup>9</sup> Fiancées of U.S. citizens may obtain visas to enter the U.S. provided that the parties marry within 90 days of entry. For the sake of brevity this visa option has not been developed in this paper, however it is subject to cumbersome consular processes that could easily be dispensed with in the case of Canadian citizen applicants as well.

1. Having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence
2. Having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament

Canada's rules of criminal inadmissibility are drawn differently than their U.S. counterparts, and an impaired driving conviction can render a foreign national inadmissible to Canada.<sup>10</sup>

In order for a foreign conviction to result in inadmissibility, it must be the equivalent of an offence in Canada. Once the Canadian equivalent of the foreign offence has been identified, the Canadian equivalent must fall within the parameters of IRPA 36(2) to result in inadmissibility.

Foreign nationals convicted of a criminal offense in Canada must seek a Canadian pardon before they will be entitled to enter Canada.

Foreign nationals who are inadmissible to Canada because of a foreign conviction may apply for a rehabilitation (i.e. a permanent waiver) after five years.<sup>11</sup> Foreign nationals convicted of a single minor offence outside of Canada (such as one foreign impaired driving conviction) may also be eligible for deemed rehabilitation after a period of ten years has elapsed.

Finally, where an inadmissible foreign national has a compelling reason to enter Canada on a temporary basis, it is possible to seek a Temporary Resident Permit (TRP). In deciding whether or not to issue a TRP, a Canadian Visa Officer weighs the applicant's need to enter Canada against the health and security risks to the Canadian population.

TRP applications for residents of the USA are submitted to the Canadian Embassy or to a Canadian Consulate in one of the following cities: Buffalo, Detroit, Los Angeles, New York, or Seattle.

Applicants are warned: *You will NOT receive immediate consideration of your application. We will contact you when your application has reached our review stage. Processing times may be lengthy.*<sup>12</sup>

In emergent circumstances, CBSA will sometimes review and adjudicate a properly prepared TRP application at the border. Such adjudication does not take long given the fact that CBSA has access to relevant U.S. databases.<sup>13</sup>

**Recommendation:** As part of the Perimeter Security and the Beyond the Border Dialogue process, Canadian authorities should actively investigate relocating TRP adjudications for U.S. citizens to CBSA for "just in time" processing.

### Higher Up the Tree: Beyond the Consulates

In addition to the above, there are a number of other border processes relating to the entrance of people that bear re-examination. Obvious examples include:

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<sup>10</sup> Generally speaking, U.S. rules of criminal inadmissibility apply only to those who have been convicted of a crime of moral turpitude or a drug crime.

<sup>11</sup> The author understands that adjudication of rehabilitation applications for U.S. citizens takes from two to six years depending on the Canadian consulate at which it was filed.

<sup>12</sup> [http://www.canadainternational.gc.ca/washington/imm/inadmissible\\_tr-interdiction\\_rt.aspx?lang=eng](http://www.canadainternational.gc.ca/washington/imm/inadmissible_tr-interdiction_rt.aspx?lang=eng)

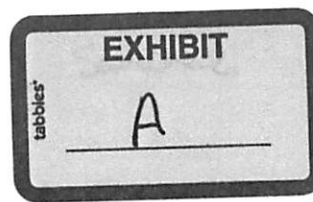
<sup>13</sup> While CBSA has access to relevant U.S. databases, the author understands that the Canadian consulates in the U.S. do not have access to these databases.

- Expanding border processes that work for Canadian and American Citizens by extending them to permanent residents of the two countries wherever possible.
- Expanding border processes to include expanded NAFTA work permit processing options:
  - The U.S. could provide a new Perimeter Security Partner Processing option to Canadians encouraging them to submit work permit applications to USCIS Regional Processing Centers where the applications would be adjudicated within 10 days at no additional charge other than the standard processing fee. As it presently stands, applications sent to Regional Processing Centers take approximately 90 days to process unless an additional Premium Processing fee of \$1,225 is provided, in which case the matter is adjudicated in 15 business days.
  - The U.S. could allow initial processing for TN (NAFTA professional) matters to take place at both Ports of Entry and at USCIS Regional Processing Centers. Currently the initial TN application must be made at a Port of Entry.
  - The U.S. could reestablish NAFTA Free Trade Officer positions at major ports of entry. The U.S. abolished such posts many years ago.
  - USCIS could expand its operations to include adjudication of NAFTA work permit matters at major Ports of Entry, thus taking over CBP's duties in this regard.

## **Conclusion**

The Perimeter Security and the Beyond the Border Dialogue provides an opportunity for a thorough review of border processes affecting the legitimate flow of people across the U.S./Canada border. Such review may require reassignment and/or expansion of agency functions to fully meet stated goals.

Consular processes for non-immigrant visas for Canadian citizens are time consuming, redundant and have a negative impact on the legitimate flow of people across a shared border. They are not well suited for citizens of the two countries that share a common perimeter. Canadians have been made visa-exempt for most non-immigrant purposes, and this exemption should be extended to include remaining non-immigrant visa categories as they pertain to Canadian applicants.



United States Department of State  
National Visa Center  
31 Rochester Ave., Suite 200  
Portsmouth, NH 03801-2915

GREG BOOS  
CHANG & BOOS  
1305 11TH STREET SUITE 301  
BELLINGHAM, WA 98225



K3SYSGEN

October 5, 2010

NVC Case Number: [REDACTED]

Dear [REDACTED]:

The National Visa Center (NVC) has received an approved I-129F petition (for a K3 non-immigrant visa application) filed on behalf of your spouse from the U.S. Citizenship and Immigration Service (USCIS). However, our records show that we have also received from USCIS an approved I-130 immigrant visa petition (for a CR/IR immigrant visa application) also filed on the behalf of your spouse.

The Immigration and Nationality Act only provides for the K3 visa classification for spouses of U.S. citizens who are awaiting approval of an immigrant visa petition or the availability of an immigrant visa. Since your immigrant visa petition has been approved and an immediate relative visa is available, your spouse no longer requires the issuance of a K-3 visa to await adjudication of the immigrant visa petition. Thus, your I-129F visa petition is administratively closed. The National Visa Center will send the I-130 petition to post for processing as soon as it is documentarily complete and scheduled for an immigrant visa interview.

NVC will send you information on the next steps to take to process your spouse's I-130 immigrant visa petition. Should you have questions regarding your spouse's immigrant visa petition, you may contact the National Visa Center at the email address, telephone number, or mailing address listed above. For more general information on the IR-1 immigrant visa process, you may review the Immigrant Visa for a Spouse webpage at the following website:  
[http://travel.state.gov/visa/immigrants/types/types\\_2991.html](http://travel.state.gov/visa/immigrants/types/types_2991.html)

**Email: NVCInquiry@state.gov**

**In order to ensure a prompt response to your email:**

- Enter your case number in the subject line of the email.
- Include the applicant's name and date of birth
- Include the petitioner's name and date of birth
- Ask about only one case per email.

[JRN.10/05/2010]

## **Audience Discussion—Boos Paper**

**Comment:** Pre-NAFTA, Canadians engaging in business travel had to apply for visas at consulates. NAFTA brought the capability of seeking admission right at the border, which was thought to be much simpler for the traveler. But now there are instances where a traveler might have made the same trip for the same purpose many times, until encountering a border official who reaches the conclusion that the trip does NOT qualify under NAFTA and denies entry. This variability in determinations made by inspectors has emerged as a problem. Some people are now advocating for the certainty implied by receiving adjudication of eligibility prior to arriving at the border.

**Boos:** It would be good if there were a way to get a consistent and reliable TN adjudication prior to arrival at the border, but that is not the way things are structured now. Fortunately there seem to have been great strides made in recent months with respect to consistency of adjudications made at the border, not just in the Blaine region, but along the entire border. Perhaps the problems regarding TN visa issuance are waning.



## ***A “Leisure Lane” for U.S. and Canadian Citizens***

David L. Davidson, Border Policy Research Institute

USCBP officials in the Seattle region have been trailblazers in the effort to improve mobility at the border, and the Cascade Gateway has been the site of numerous pilot tests. An ongoing example is the “Ready Lane” pilot test at Peace Arch, targeted at travelers possessing RFID-enabled documents. The goal is to stream such travelers through a single booth, where the pace of the inspection process will be more rapid because of the need to do less handling of documents. But consider the following empirical data related to the Cascade Gateway:

- Of the one minute (on average) spent processing a car, about 75 percent of the time is involved in the interview and 25 percent is spent handling travel documents (gathering from traveler, swiping through reader, returning to traveler).
- Other than in the NEXUS lane, less than 1 percent of southbound travelers are making use of RFID-enabled documents (EDL, PASS Card). This is true even though EDLs have been available for almost three years and 275,000 have been issued in Washington State.

The above data shows that, at best, the Ready Lane will shorten the inspection process by about 25 percent (the document-handling ratio) for 1 percent of the travelers, which yields a cumulative 0.25 percent improvement in throughput. RFID-enabled documents are very effective at eliminating one component of the inspection process, but the slow pace of uptake of such documents ensures that many years will pass before the Ready Lane reaches its potential.

If an immediate improvement in mobility is a goal of the Beyond the Border group, it is necessary to instead design a program that has immediate broad applicability. Consider this additional data related to the Gateway:

- 87 to 95 percent of cross-border travelers (both north- and southbound) are citizens of either the U.S. or Canada.
- 80 to 85 percent of cross-border travelers (both north- and southbound) are engaged in leisure travel, defined as shopping, recreation, vacation, family visit, or church.

Why not designate a lane that targets the major segments of the traveling population—U.S. and Canadian citizens engaged in solely leisure travel? Such a “Leisure Lane” would be designated as accessible only to travelers that:

1. Are citizens of either the U.S. or Canada. This avoids all issues related to third-country nationals that are visiting or residing in either country (i.e., visas, green cards, I-94s, etc.).
2. Are engaged in a trip that is solely for leisure purposes. This avoids issues related to conveyance of commercial goods, conducting business, etc.
3. Have “nothing to declare” with respect to the goods in their possession (akin to the similarly named exit-doors found in a European airport’s customs hall). Being in the lane amounts to a declaration that there are no proscribed items (contraband, firearms, fruits, vegetables) and that no duty is payable on other items.

At the booth, an inspection would still involve gathering and scanning of documents (which is the short part of the process), but an *abbreviated interview* would be used, resulting in a change to the lengthier part of the process. The operational goal of the program would be to reduce the average length of the interview to 30 seconds, rather than the current 45. If that goal were achieved, the cumulative improvement in operations would be on the order of 18 percent (i.e., 90 percent of

travelers eligible on the basis of citizenship, multiplied by 82 percent eligible on the basis of trip purpose, multiplied by a 25 percent reduction in the length of the interview process). That degree of improvement is so large that it would be worth dedicating a highway approach lane to the concept, and not simply an inspection booth. A highway lane leading to a set of Leisure Lane booths would make a significant difference in mobility. The configuration would make sense at many of the large ports along the border, where spikes in travel volume occur in the summer and on vacation weekends, and those spikes consist entirely of leisure travel.

The Leisure Lane is most effective if USCBP and CBSA conclude that shortening the interview does not generate an unacceptable level of risk with regard to this category of traveler. When considering that question, it is worth remembering the strides that have been made since 9/11 with respect to border security. There is much information gathered and analyzed “Beyond the Border” that supports the decision to permit a traveler’s entry. Consider what is known at the time immediately after scanning the documents of a traveler within the Leisure Lane:

- A WHTI-compliant document was presented. It is a valid, fraud-resistant document, issued by a federal, state, or provincial agency that employs stringent security measures prior to issuance of the document.
- The document itself did not trigger any alerts (e.g., not reported stolen).
- The traveler is a citizen of the U.S. or of Canada. If citizenship was via a naturalization process, then a background investigation was part of the process (which is more than can be said for native-born citizens).
- The person is not on a watch list and has no outstanding “wants or warrants.”
- The vehicle license plate has likewise been scanned, so it is established that there are no known issues with regard to the vehicle.
- There are no radioactive emissions emanating from the vehicle (if passing southbound through a Radiation Portal Monitor).
- The traveler is making a trip of a solely leisure nature.
- The traveler has implicitly stated that he has nothing to declare with respect to the goods in his possession.

With all of that established, the crucial remaining step is to ensure that the *person* is the legitimate owner of the *document*, which is done by comparing the photograph on the document to the person in the car. The interview obviously is the means by which the agent looks for wrong-doers. The vast majority of the wrong doers are folks who *inadvertently* are doing wrong—the ones who don’t understand that not even an apple from Costco can be taken home. Because of these inadvertent wrong-doers, there have to be questions targeted toward ensuring compliance with the terms of use of the Leisure Lane. A very small number of the wrong-doers are intentionally engaged in criminal activity, and the agent is trying to detect those people, based upon their *behavior* during the interview. An abbreviated interview still provides an opportunity to notice suspicious behavior, and obviously the agent retains full leeway to react to such behavior by engaging in a longer series of questions or referring the car to secondary.

While the greatest effectiveness is achieved if USCBP and CBSA deliberately strive to implement an abbreviated interview, the Leisure Lane is likely to improve mobility even if no such effort is made, because the lane essentially provides a segregated path for a class of travelers that are already most likely to receive shorter interviews (i.e., no work issues, no declarable goods, no visa issues, etc.).

The Leisure Lane makes sense only at larger ports, where multiple highway lanes lead to a large number of booths. At the Peace Arch, for instance, one highway lane would feed NEXUS, one highway lane would feed a group of Leisure Lane booths, and the third highway lane would accommodate other travelers in the remaining booths. Fixed highway signage would be needed upstream of the port to direct people into the correct approach lane, and variable message signs above the booths would do the rest.

A final thought is what the Leisure Lane might achieve in terms of the temperament of travelers. A traveler that chooses such a lane, reaches the PIL booth more quickly, and receives an abbreviated interview that is focused mostly upon the goods in his possession is likely to head down the road feeling that what took place was reasonable. Cross border travel might climb back toward pre-9/11 volumes if our citizens could traverse the border without forming the impression that they are criminal suspects.

## Audience Discussion—Davidson Paper

**Brandt:** There are likely to be language issues, with travelers unable to correctly follow highway signage. The self-declaration idea is somewhat like what occurs in NEXUS, although NEXUS folks have participated in an initial enrolment interview and are thus more likely to understand the terms of use of their lane. Overall, the concept has some promise, and people would drive off with a better impression, but the percentages are such that lines in a Leisure Lane might be larger than lines in other lanes.

**Davidson:** The separate CBSA booths for Canadian and U.S. citizens during the Olympics were part of the inspiration for this idea. CBSA believed that it was possible to move citizens through more quickly than third-country nationals with visa issues. The fact that USCBP erected variable message signs over all southbound booths was the remaining inspiration, in that a highway lane can feed a variable number of designated booths.

**Comment:** The concept would work only at ports where the approach lanes provide enough upstream separation of traffic stream, or else a problem would develop similar to what is seen with FAST—i.e., a FAST truck is stuck waiting in a queue with standard trucks until it is quite close to the booths. Another thought is to have an entire port dedicated to such leisure travelers.

**Comment:** The Whirlpool Bridge in Niagara is a dedicated NEXUS crossing, so there is precedent for the idea of a dedicated crossing. With regard to the notion that a traveler might experience a more pleasant interaction in such a lane, remember that a traveler caught with an apple might wind up with a \$300 fine, so the “bad taste” generated by the apple can be quite substantial.

**Davidson:** Good highway signage is obviously a factor. USCBP is now posting pictorial signs related to fruit/vegetables in order to tackle language issues. B.C. has an anti-idling campaign that includes signs posted a couple of kilometers up the highway, and similar signage would be needed here. Over time, the traveling public would become familiar with the lane segregation scheme and would become more compliant with the lane’s restrictions.

**Comment:** A decade ago, the U.S. and Canada decided that advance electronic notice related to cargo was necessary. Australia has since implemented an advance notification process for air passengers. In the pre-Olympics period, there was a proposal to have pre-booking for attendees at the border crossings. USCBP and CBSA claim that they want advance data. This proposal is interesting, but it’s much too limited in ambition. There’s no reason why someone idling in a lineup couldn’t provide advance information, which could be screened prior to arrival at the booth. We have advance notification for cargo, for air. There’s no reason why it could not be achieved at the land border. Let’s use technology to give the agencies the information they want, but let’s not pick and choose by mode.

**Davidson:** At a TBWG meeting a couple of years ago I met a CBSA employee whose job is to think about these “blue sky” ideas for traveler mobility. He had the idea of advance notification via internet regarding a group of people intending to arrive at the border at a certain time in a certain vehicle. All of their passport numbers and names would be provided ahead of time, and when the automatic read of the license plate occurred at the booth, up would pop all of that information on the agent’s screen.

**Comment:** B.C. and Washington are at the early stages of the design process related to the roads that will lead to the rebuilt CBSA port at Aldergrove/Lynden. This topic is on the agenda of the binational working group that supports the dialogue between the governor and premier. Right now there is enormous opportunity to think about the potential of a new port, fed with the right

combination of highway lanes, whether they be NEXUS, FAST, or others. There's a long lead time to the construction of highway lanes, and the early concepts are being discussed now. Will we build a massive traditional port out in the farmland, or might it be a state-of-the-art smart port?

**Comment:** Peace Arch and Pacific Highway have 16 booths, and 30% of the traffic is handled through just 2 booths, via NEXUS. The average time per car is down to about 20 seconds in NEXUS. The other 14 booths are needed to handle 70% of the traffic, which indicates how slow and inefficient the regular process is. You're proposing in this Leisure Lane that the agencies treat travelers in a manner similar to that of the vetted and trusted NEXUS travelers, but without engaging in the associated security checks. The real reduction in wait time occurs in the NEXUS or Ready Lane booth because the agent has the benefit of information before the vehicle arrives, and that information guides the agent's Q&A and behavior analysis. The provided information includes citizenship, helps address issues regarding admissibility, and includes other kinds of proprietary background information. If the WHTI-compliant documents now in use (passports, permanent resident cards) were all RFID-enabled, mobility would be vastly improved. Finally, there is not a correlation that a U.S. or a Canadian citizen is necessarily a lower risk individual, and because of data-sharing restrictions, information about Canadians is not available in a USCBP booth to the same degree as information regarding U.S. citizens. Absent advance data, the only way to assess risk is via the interview.

**Davidson:** EDLs and RFID-enabled passports are a tremendous concept, but there's the reality that they are not yet widely used, despite years of marketing and issuance. I was trying to figure out how to speed things up right now. I'm asserting that a citizen who has pre-declared the purpose of their trip and that they have no problematic goods is likely to require less questioning.

**Comment:** Is it the case that the advance information made available via an RFID-enabled document actually results now in a different interview—less questions, and perhaps questions that are more *relevant*, in the view of the traveler? If so, that would help counteract the “chilling” effect now felt at the border.

**Comment:** That certainly is the case in the NEXUS lane. At other big ports that have tried Ready Lanes, there have been 30% improvements in the per-car clearance rate, due to the advance information available to the officer.

## ***Strengthening Cross-Border Operational Cooperation: Joint Facilities and Shared Services***

Geoffrey Hale, University of Lethbridge

Each border—northern, southern, or maritime—has its own distinct characteristics and challenges, and we must tailor our approach to meet the unique threats, challenges, and opportunities. Strengthening our cooperation with Canada, just as we have with Mexico, will help us protect our homeland.

*Hon. Alan Bersin, October 13, 2010<sup>1</sup>*

The initiation of public discussions of a U.S.-Canada perimeter security process in February 2011 creates both improvement opportunities and a partial mandate from political executives in each country to improve inter-governmental and inter-agency cooperation and coordination on security and border management issues. It also creates opportunities for needed improvements in public consultation and communications that can contribute to greater effectiveness of both security and facilitation measures by both governments. As noted by Commissioner Alan Bersin of U.S. Customs and Border Protection (CBP), “Security and the facilitation of trade are two sides of the same coin. Each reinforces the other” with the effective use of improved risk management partnerships and processes.<sup>2</sup>

Perimeter cooperation, based on similar approaches to container security, intelligence sharing, and constraints on asylum shopping, is already a partial reality within North America, if one that has received limited public acknowledgement until recently due to political sensitivities. Improving perimeter coordination may reduce, but is unlikely to eliminate, delays and bottlenecks resulting from intensified border security measures, whatever the best efforts of governments in both countries to coordinate and streamline these processes. However, they can be mitigated significantly as part of a broader border management strategy that combines ongoing improvements in processes, border infrastructure, and staffing capacities in consultation with domestic stakeholders and partners in friendly countries.

This paper addresses the challenges and trade-offs of making the most of finite resources to meet CBP’s mandate of combining enhanced levels of security with effective service to border communities, law-abiding citizens and legitimate businesses engaged in cross-border travel, trade and other forms of economic activity. Given the scale of border operations and wide overall and seasonal variations in cross-border traffic, it recommends that both CBP and the Canada Border Services Agency (CBSA) actively explore the potential for joint location of border facilities, the enhancement of shared services, and the co-location and cross-training of staff from both agencies to address the varied needs of large, medium-sized and small ports-of-entry and their respective clienteles.

### **Combining Security with Facilitation of Legitimate Trade and Travel**

The efficient, secure management of ports-of-entry requires the presence of adequate infrastructure to manage traffic, the availability of appropriately trained personnel to staff ports-of-entry in response to variable traffic patterns in both primary and secondary inspection facilities, and systems that not only facilitate efficient inter-agency and intergovernmental coordination but their effective

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<sup>1</sup> Hon. Alan Bersin (2011), “Remarks by CBP Commissioner Alan Bersin, Migration Policy Institute, Washington, DC”, (Washington, DC: Department of Homeland Security, 13 October).

<sup>2</sup> Hon. Alan Bersin (2010), “Remarks by CBP Commissioner Alan Bersin, Western Cargo Conference, San Diego” (Washington, DC: Department of Homeland Security, 23 October), 1.

use by private sector businesses and individual travellers who may have varying capacities and incentives to work within such systems.<sup>3</sup>

CBP estimates that at least \$ 6 billion – not including related costs of “behind the border” transportation links – is required to improve infrastructure along northern and southern U.S. borders, much of which dates from the 1940s and 1950s, if not earlier. Current projects underway under the American Recovery and Reinvestment Act of 2009 are valued at approximately \$ 1.5 billion. Although the government of Canada has made significant commitments to improvements in border infrastructure in recent years, many of these projects are still in the planning stages.<sup>4</sup>

The bi-national Smart Border Accord of December 2001 identified the development and extension of several “trusted traveler” and “supply chain security” programs as a key element in risk management strategies intended to identify and expedite low risk trade and travel across the U.S.-Canada borders. Similar, if less extensive agreements were concluded with Mexico. CBP Commissioner Alan Bersin has identified the expansion of such programs as central to promoting the “secure flow of people, cargo, and goods” across borders, while “pushing back borders” through increased use of risk-based account management and by “pushing ... borders out by moving some border processing, including pre-screening and preinspection, away from the physical border.”<sup>5</sup> Although enrolment in trusted traveler programs has grown rapidly since 2008, increasing to more than 850,000 in late 2010, including more than 400,000 in NEXUS,<sup>6</sup> these travellers still account for only a relatively small fraction of traffic across land borders.

Moreover, major business groups indicate that the cost of implementing and maintaining certification for trusted shipper (supply-chain security) programs are costly enough relative to their net economic benefits that they are unlikely to achieve substantial market penetration outside a small number of industries with dedicated cross-border supply chains.<sup>7</sup> Commissioner Bersin’s proposals to shift DHS border administration from “managing shipment by shipment” to “management by account”<sup>8</sup> may well address a portion of this challenge, but they remain a work in progress whose success will depend on effective cooperation with and from the customs brokerage community and consistent communication with small and medium-sized businesses which face the greatest transaction costs of dealing with ever changing border procedures and product specific rules.

These factors, along with shifting economic conditions and the challenges of regulatory coordination, have contributed to what some observers have called the “psychological thickening of the border,” contributing to significant declines in cross-border traffic between 2000 and 2010: 21.8 percent and

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<sup>3</sup> United States and Canadian Chambers of Commerce (2008), “Finding the Balance: Reducing Border Costs while Strengthening Security” (Washington and Ottawa: February); United States. Department of State and Department of Homeland Security (2008), *Preserving our Welcome to the World in an Age of Terrorism – Report of the Secure Borders and Open Doors Advisory Committee* (Washington, DC: January); Anne Goodchild, Steven Globberman and Susan Albrecht (2007), “Service time variability at the Blaine, Washington International Border Crossing and the Impact on Regional Supply Chains”, *Research Report # 3*. (Bellingham, WA: Border Policy Research Institute, June).

<sup>4</sup> Lou Holloway and Ron Rheinas (2011), “Border Infrastructure and Trade Logistics,” (Fort Erie, ON: Niagara Falls Bridge Commission and Peace Bridge Commission, 17 June), 78.

<sup>5</sup> Bersin, “Remarks to Migration Policy Institute”; Bersin, “Remarks to Western Cargo Conference, San Diego.”

<sup>6</sup> Bersin, “Remarks to Western Cargo Conference”; United States. Department of Homeland Security (2010), “Fact Sheet: NEXUS” (Washington, DC: May); online at: [http://www.cbp.gov/linkhandler/cgov/newsroom/fact\\_sheets/travel/nexus\\_fact.ctt/nexus\\_fact.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/travel/nexus_fact.ctt/nexus_fact.pdf); accessed June 18, 2011.

<sup>7</sup> United States and Canadian Chambers of Commerce (2008); United States Chamber of Commerce and Canadian Chamber of Commerce, *Finding the Balance: Shared Border of the Future*. Washington and Ottawa: July 21, 2009.

<sup>8</sup>

22.8 percent in the number of personal vehicles and trucks respectively between 2000 and 2010 (see Table 1). The number of persons (re-) entering the United States from Canada declined 40 percent between 2001 and 2009, compared with a 36 percent drop in Mexican border crossings.<sup>9</sup>

**Table 1. Average Annual Changes in Southbound U.S.-Canada Border Crossing: 1996-2010**

	% change per year within given timespan	
	Personal Vehicles	Trucks
1996-2000	-1.1	6.6
2001-2003	-6.4	-1.5
2004-2007	0.0	-1.0
2008-2009	-5.3	-11.9
2010	8.2	8.4
Cumulative change 2000 - 2010	-21.8	-22.8

Source: U.S. Bureau of Transportation Statistics; author's calculations.

The economic effects of these changes are noticeable in many U.S. border communities despite the benefits of a declining U.S.-Canada exchange rate – as well as reducing the efficiency of cross-border supply chains which have become a major part of industry structures in both countries.

The rebound in cross-border trade and travel as both countries recover from the recession of 2008-09 suggests that future growth will contribute to increased pressures on both governments to invest in border-related infrastructure and reallocate appropriately trained staff to reduce the likelihood of bottlenecks at the busiest crossings while maintaining service to smaller communities. However, it remains entirely possible that growing budgetary constraints will reduce the capacity of governments to respond to these pressures effectively unless there is much closer coordination in their plans to improve border infrastructure, coupled with increased staffing efficiencies that could be obtained from closer cooperation between and among border agencies.<sup>10</sup>

### **Managing Trade Offs: Improved the Targeting of Resources vs. Responsiveness to Local Communities**

The most logical fiscal and administrative response to budgetary pressures is to target new investments to the busiest border crossings, which are often the sources of the greatest traffic bottlenecks. This may lead to the reallocation of operational resources by reducing services in less populated areas. These pressures have already led to the closing of some smaller ports-of-entry by the Canadian government, while stretching available CBP staff levels at certain points along the border.<sup>11</sup>

<sup>9</sup> United States. Bureau of Transportation Statistics; accessed June 18, 2011; Jenny Guarino (2011), “A decade of decline in person crossings from Mexico and Canada into the United States” (Washington, DC: Bureau of Transportation Statistics, 27 February); online: [www.bts.gov/publications/special\\_reports\\_and\\_issue\\_briefs/special\\_report/2011\\_02\\_27/html/entire.html](http://www.bts.gov/publications/special_reports_and_issue_briefs/special_report/2011_02_27/html/entire.html); accessed June 18, 2011.

<sup>10</sup> Richard M. Stana (2010), “Border Security: Enhanced DHS oversight and assessment of interagency coordination is needed for the Northern Border” (Washington, DC: U.S. Governmental Accountability Office, 17 December); online at: <http://www.gao.gov/products/GAO-11-97> and <http://www.gao.gov/products/GAO-11-97#recommendations>; accessed February 2, 2011.

<sup>11</sup> Loren L. Timmerman (2008), “Securing the Northern Border: Views from the Front Lines”, Statement to U.S. Senate Committee on Homeland Security and Governmental Affairs”, Havre, MT, 2 July; online at:



A review of vehicle crossing statistics for 2007 indicates that 55.6 percent of cars and 65.1 percent of trucks entering the United States used four major ports of entry: Detroit, Port Huron, MI, Blaine, WA, and the four bridges along New York's Niagara frontier, as noted in Table 2. Conversely, the largest number of ports of entry relative to northern border state populations and related traffic flows is located between the Lakehead and the Pacific Corridor.

**Table 2. Three largest states as percentage of northern border traffic: 2007**

	Population	Percentages		
		USCBP Reporting Areas	Car Traffic	Truck Traffic
Largest 3 states				
<i>Michigan</i>	22.0	3.6	31.9	42.5
<i>New York</i>	42.0	7.2	31.8	28.7
<i>Washington</i>	13.9	18.1	18.6	11.8
Subtotal	77.9	28.9	82.3	83.0
Plains states + ID	17.9	22.0	8.5	5.6
New England states	4.2	49.4	8.9	11.2
Total	100	100	100	100

4 busiest crossings 55.6 65.1

Source: U.S. Bureau of Transportation Statistics; author's calculations.

A similar pattern applies *within* the Pacific Northwest and Plains states. As noted in Table 3, four border crossings in the Cascade Gateway / Lower Mainland (Blaine, Lynden, Sumas, and Point Roberts) accounted for 50.7 percent of passenger vehicles and 45.2 percent of commercial trucks crossing the border along the 49<sup>th</sup> parallel in 2007.

**Table 3. Volume of average daily car & truck traffic, Lakehead to Pacific Coast: 2007**

Crossing category	# in Category	Truck traffic		Car traffic	
		# per day	% of total	# per day	% of total
< 100 cars per day	29	155	3.9%	4,774	18.8%
100 - 499 cars per day	17	746	18.9%	3,650	14.4%
500+ cars per day	5	1,263	32.0%	4,085	16.1%
Cascade Gateway / Lower Mainland	4	1,782	45.2%	12,871	50.7%
Total	55	3,946	100.0%	25,380	100.0%

Source: U.S. Bureau of Transportation Statistics; author's calculations.

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<http://hsgac.senate.gov/public/ files/070208Timmerman.pdf>; accessed 07 July 2008; Public Safety Canada (2011), "Fact Sheet: Alternate Service Delivery" (Ottawa: 16 February); online at: <http://www.cbsa-asfc.gc.ca/media/facts-faits/094-eng.html>; accessed March 10, 2011); Randy Boswell (2011), "U.S. offers to control border point," *The Ottawa Citizen*, 13 May, A4.

Another five crossings [Pembina, ND (I-29), Sweetgrass, MT (I-15), International Falls and Grand Portage, MN, and Oroville, WA (US/BC 97)] accounted for an additional 16 and 32 percent of cars and trucks respectively, while the remaining 46 ports-of-entry served 33.2 percent of cars and 22.8 percent of trucks crossing the border within this region. At the same time, more than half of the ports-of-entry between the Lakehead and the Pacific report average daily traffic of fewer than 100 cars a day – several with a small fraction of this volume. Some of these crossings have major seasonal variations in traffic. However, most of these ports-of-entry serve a primarily local clientele.

The length and diversity of conditions along the U.S.-Canada border create competing pressures to maintain services in regionally significant border crossings, along with services for local residents in more thinly-populated regions. The realities of Congressional oversight and responsiveness to constituent concerns that were visible in the allocation of ARRA stimulus funds to border infrastructure projects in 2009-10 suggest that management approaches that pit efficiency goals, however desirable, against the functional access to border crossings for residents of communities along the border are likely to result in less-than-optimal outcomes on both fronts.

### **The Management Challenge: Making the Most of Limited Resources**

These challenges and trade-offs could be addressed more effectively if CBP and CBSA were to consider the development of pilot projects for joint border facilities. This proposal could usefully be incorporated within proposals made in the Obama / Harper Joint Declaration of February 2011 for improved alignment of the two countries' border infrastructure projects.

The best candidates for such projects are likely to fall into two major categories:

- infrastructure supportive of major national or regional projects (such as the Vancouver Olympics) with significant positive economic spinoffs in the neighboring cross-border region: and
- projects which either (or both) governments would view as secondary priorities that they would be unlikely to pursue independently in the short-term.

Other criteria for the selection of joint facility pilot projects could include:

- strong support from neighboring provincial, state, and local governments willing to provide supportive infrastructure improvements – including road improvements, secure telecommunications facilities and other measures – as part of broader efforts at the development of trade corridors or regionally significant services;
- obsolescence of existing port facilities with significant impact on operational capacity and existing traffic flows;
- ports-of-entry facing significant security challenges whose successful resolution requires greater than average levels of collaboration between the two governments;
- availability of land for joint facilities at the border without major environmental, zoning or local political concerns – particularly with a view to creating secure facilities that can permit efficient processing of people and goods, while accommodating differences in legal mandates and constraints upon CBP and CBSA officers; and
- ports-of-entry targeted for closure or significant service reductions where one government or the other is willing to play a lead role in facilities improvement if supported by the other.

The concept of joint border facilities is not new. At least three such pilot projects have been initiated during the past decade: the Sweetgrass-Coutts project at the principal border crossing between Montana and Alberta; the Oroville-Osoyoos crossing connecting British Columbia's Okanagan region with communities along the Eastern slopes of Washington State's Cascade mountains, and the Danville-Carson (Grand Forks) port-of-entry connecting rural Washington State, northwest of Spokane, with southern British Columbia. Security considerations have limited the public release of evaluation reports on joint facilities to date. However, the operational lessons learned from these facilities should have broader applicability.

The measured pace of deployment of border infrastructure funds by both governments suggest that although funds have already been allocated for a number of major projects, especially in the Great Lakes region and the Saint John River valley on the Maine-New Brunswick border, there are a significant number of opportunities to examine the potential for joint facilities and co-location.

Joint facilities offer a number of potential benefits to both agencies, even though there are undoubtedly administrative challenges to be addressed and overcome. As with existing collaborative programs such as the Integrated Border Enforcement Teams, they would encourage increased mutual familiarization and trust among officers of border agencies which could facilitate closer collaboration in a range of activities. Joint facilities in more remote areas could provide greater operational security – although recent operational challenges faced by officers along the St. Lawrence Valley separating New York and Ontario suggest that these benefits could apply in other areas as well.

### **Staff Exchanges / Cross-Training / Shared Services**

The development of joint facilities could also lend itself to expanded staff exchanges and the potential for other pilot projects including the cross-training of CBP and CBSA officers to permit more efficient staffing arrangements for smaller border posts. Building on the success of existing collaborative programs of joint law enforcement, such as the Integrated Maritime Enforcement Teams ("Shiprider"), such approaches could permit each agency to maintain lower staff complements in smaller ports-of-entry during slower periods of operation. Officers could be "deputized" to "back up" one another, with provisions for the officer from the "host country" to take the lead when enforcement proceedings are necessary. While recognizing the need for more extensive cross-training of staff and related familiarization with each agency's procedures, such approaches could lead to more flexible staffing procedures with potential benefits for front-line officers and support staff as well as local communities and other clients of border facilities.

Recent operational changes in Canada, particularly administrative rulings requiring that front-line CBSA officers be equipped with and trained to use firearms, and that single postings ("working alone") at ports-of-entry be eliminated for safety reasons, expand both the opportunities and incentives for both co-location of facilities and closer operational collaboration in other areas.

Port directors, with their unequalled understanding of their operational priorities and challenges, are likely to be the best people to identify potential pilot projects. However, the Obama / Harper declaration's proposal for bi-national port-of-entry advisory committees should also provide port directors with creative areas for the development of shared services that could increase operational efficiency, and provide worthwhile enhancements or improvements of services valued by communities and stakeholder groups.

Many of the most creative ideas for enhanced border cooperation and law enforcement collaboration have emerged from the Pacific Northwest, including the NEXUS program, which

began as a local pilot project in the Pacific corridor, the Integrated Border Enforcement Teams, the Integrated Maritime Enforcement Teams and the related “Shiprider” program, and most recently, improvements in the configurations of ports-of-entry as part of the International Mobility and Trade Corridor Project.<sup>12</sup>

These proposals are offered in the spirit of innovation and collaboration that have long characterized border management in the Pacific Northwest, recognizing the continuing potential for ongoing improvements in security, law enforcement collaboration, and the efficient, effective delivery of services valued by border communities and economic stakeholders.

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<sup>12</sup> Border Policy Research Institute and Whatcom Council of Governments (2011), “2011 Pacific Highway Southbound FAST Lane Study – Final Report (Bellingham, WA: Western Washington University, June).

## Audience Discussion—Hale Paper

**Comment:** There is apparently a dynamic whereby Canadian law enforcement (CBSA, RCMP) find it expedient to provide information to USCBP about a criminal, so that the stop, search, and arrest take place on American soil, leading to prosecution in America, and perhaps thereby a lengthier sentence.

**Comment:** CBSA is facing budget challenges and other challenges to staffing. How could cross-training help address those challenges, and how could binational port committees serve to instigate cross-training within a region?

**Hale:** At small crossings, where CBSA must now ensure that no agent is in a “work alone” setting, the ability to co-locate a single officer from each country in a single building provides each officer with backup. As with the Shiprider concept, the officer with jurisdiction at the site of an incident (either north or south of the actual border) would take the enforcement lead. And if a lineup existed on one side but not on the other, deputization would allow both officers to work on clearing the one lineup. With respect to port committees, their role is purely advisory, and should remain so. A committee can help build trust among all stakeholders, but it is the agencies that must instigate cross-training.

**Comment:** It would be good to make progress toward a “smart border” at which a person could cross more in the European style, but which would still allow our two countries to maintain desired security. A border crossing where you move from country to country with the sense that transnational cooperation is taking place to support your easy movement—a pooling of sovereignty rather than a partition. The RFID-enabled documents and other technological solutions don’t seem as if they will be adequate to achieve this vision.

**Hale:** An impediment to such a vision is the distinct capital planning and funding paradigms on either side of the border. In the U.S., one CBP region extends from the Pacific to the Great Lakes, while that expanse is divided into several CBSA regions. Should CBSA thus engage in a planning process that merges several of its regions, in order to match the geographic scope of the planning occurring south of the border? Also, there is the problem of timing brought about by the federal budget processes. USCBP must go to congress to procure funding, whereas CBSA need not approach parliament. A jointly established facilities plan therefore would be difficult to implement in a timely way.

**Comment:** One major impediment to joint facilities has been that prior examples have been built straddling the actual border, which then resulted in a whole set of problems related to contracting and construction. There should be some legislative authority established such that a joint facility could be located entirely on one side of the border, just to avoid this extra nuisance factor.

**Hale:** The GAO should be asked to do a formal review of the existing joint facilities, exposing both what has worked well, as well as what has not—with respect both to construction of the facility and with respect to ongoing operations.

## ***Motivations and Options for Streamlining Tariffs and Customs Processing***

Paul Storer, Western Washington University

### **Introduction and Motivation**

The February 4 Harper/Obama “Beyond the Border” declaration includes the economic objectives of facilitating trade and fostering economic growth and the creation of jobs. A key motivation for including these objectives in the February 4 declaration is the evidence that border security measures implemented since 9/11 have led to reduced volumes of Canada-U.S. trade. For example, Globerman and Storer (2008 and 2009) provide statistical evidence of significant declines in the level of US imports from Canada in the period after 9/11, although the effect decayed somewhat over time, particularly for trade in the Great Lakes region. A simulation-based study by Nguyen and Wigle (2011) predicted significant declines in trade flows and real GDP as a result of increased transportation costs linked to stricter border security. Finally, Globerman and Storer (forthcoming) examine regional differences in measured transportation costs in the pre and post-9/11 periods and find evidence that transportation cost ratios displayed less favorable trends in regions such as the Pacific Northwest. These regional patterns are attributed to the fact that trusted-trade programs provide limited benefits for traders other than large vertically integrated firms such as the automotive producers (for whom FAST was largely designed).

The Beyond the Border declaration recognizes the need to “reduce the cost of conducting legitimate business across the border by implementing, where practicable, common practices and streamlined procedures for customs processing and regulatory compliance.” This paper provides a brief overview of the motivation for the streamlining of these procedures and specifies and evaluates options for achieving such streamlining.

### **Principles for Reducing the Cost of Legitimate Cross-border Trade**

Given the potential for significant negative consequences of security-related border delays, policy makers have tended to emphasize several principles when mitigating these consequences. One focus has been to increase the level of human and infrastructure resources devoted to border enforcement so that higher security levels can be attained without producing excessive delays. A second approach has been to introduce risk management methods that increase the efficiency of any given level of border resources by targeting security measures toward trade which entails greater potential risks.

A related approach that has been suggested by Robertson (2010) is to reduce the amount of resources devoted to revenue-collection efforts at the border so that resources can be redeployed toward security-related activities. This effort would be particularly appealing if economic activity grows significantly due to reduced delays produced by rebalancing the allocation of resources to security versus revenue collection. Harmonization and streamlining of customs processing procedures can also enhance security by allowing a substitution of resources away from revenue collection and by eliminating wasted time related to redundant security procedures. These substitutions do involve trade-offs, at least initially, in terms of lost federal government revenues and reduced latitude for countries to unilaterally determine their customs processes. This paper will examine and quantify some of these trade-offs.

### **Analysis of Three Options for Streamlining Tariffs and Customs Procedures**

Three options for streamlining tariffs and customs procedures will be considered in this paper. The three options were chosen to represent an ambitious option, an intermediate option, and a relatively modest option. These three options are:

- a.) Ambitious option: Canada and the United States set almost all most favored nation (MFN) tariffs to zero and adopt a uniform process for clearing imports from third countries.
- b.) Intermediate option: Canada and the United States set almost all most favored nation (MFN) tariffs to the lower of the two countries' rates and adopt a uniform process for clearing imports from third countries.
- c.) Modest option: Canada and the United States harmonize their tariff classifications (but not their tariff rates) at the 10-digit level rather than the current 6-digit level. The import declaration process is harmonized to the maximum extent possible.

The ambitious option enacts Robertson's proposed movement away from revenue collection by having Canada and the United States both move their most-favored nation (MFN) tariffs to zero for almost all goods. In fact, this situation already exists for a large number of goods. Of the 5,062 6-digit Harmonized System (HS) tariff codes used by Canada and the United States, 1,076 have just a single *ad valorem* tariff rate and that rate is zero in both countries. The number of tariff lines with tariffs equal to zero is even higher because each 6-digit HS code can contain multiple tariff lines.

A benefit of this aggressive harmonization of tariffs is that transportation and logistics considerations, and not differences in MFN tariffs between Canada and the United States, would determine whether a good is imported into North America through Canada or through the United States. Customs officers at ports of entry in Canada or the United States could process imports at their point of entry to North America and charge any duties to the importer of record in either Canada or the United States. These imported goods could subsequently cross the Canada-U.S. border without the need for future duty payments, drawback applications, or certificates of origin, although NAFTA rules would require certification for any producer planning to subsequently export the goods to a customer in Mexico who will claim the NAFTA tariff preference.

One advantage of this approach is that it could allow the Pacific Northwest region to function as a true gateway to North America for goods from Asia and elsewhere. Shippers could choose the point of entry to North America based on logistical considerations and producers could source intermediate inputs and materials from the lowest-cost supplier with little need to worry about establishing origin of the import component of future exports. Also, the near-elimination of rules of origin would level the playing field for small and medium-sized exporters who are discouraged from exporting by the fixed costs of complying with NAFTA rules of origin.

The current magnitude of this disincentive effect for NAFTA programs is shown by Table 1 which illustrates the fraction of imports to the United States for which a NAFTA tariff rate was claimed. This rate varies from a high of 66 percent in the Detroit customs district to a low of 26 percent at St Albans VT. The value for the Seattle customs district is close to the middle of the range at 38 percent. This range of values for NAFTA tariff utilization suggests that the net benefit of the NAFTA program varies along the border. This variation could reflect regional differences in some combination of the following factors: the use of non-originating goods, the difference in NAFTA and non-NAFTA tariffs for the goods traded in each region, and differences in the costs of complying with rules-of-origin documentation relative to the benefits.

A clear cost of the ambitious option would be the loss of federal government revenue at a time of budgetary challenges in both Canada and (to a greater extent) the United States. As shown in Table 2, customs revenues account for roughly one percent of federal government revenues in the United States and just under two percent in Canada. While the loss of these revenues would worsen the current fiscal crisis, there might be several mitigating factors from other revenue sources. If the

elimination of tariffs encourages economic growth, offsetting growth in other tax revenues could easily finance the revenue lost from customs duties in a “pay as you go” context. It’s worth noting, for example, that the drop in U.S. personal income tax revenue between the 2007 and 2009 fiscal years was ten times the total amount of customs-related revenues in fiscal 2009.

The intermediate option would involve less loss of customs revenue while still having the benefit of allowing for the elimination of rules of origin between Canada and the United States. This policy would still face potential political obstacles to a common external tariff to the extent that tariff rates differ between the two countries. Figure 1 compares the differences in tariff rates for the 2,057 6-digit HS codes with a single *ad valorem* tariff rate. Over half (1,076) of these tariff codes are zero in both countries and another 295 are within two percentage points in both countries. Figure 2 shows the distribution of tariff rate differences for the single-rate HS6 codes that aren’t zero in both countries. These differences are large in some cases and Figure 3 compares the sizes of tariffs applied in Canada and the United States. While there is a rough increasing trend with higher tariffs in one country tending to correlate with higher tariffs in the other, the correlation is far from perfect and there are a number of cases where one country has a zero MFN tariff while the other applies a fairly significant positive tariff.

One benefit of the most ambitious adoption of zero tariffs by both countries is that both Canada and the United States would be adjusting to the same value and neither country would have the impression that it is following the lead of the other. With tariffs set to whichever value is lower, both countries would need to follow the other’s lead in some cases. Interestingly enough, the numbers of adjustments to be made in the cases with just one tariff line per HS6 code are almost balanced evenly between the two countries. In 494 cases (50.4%), Canada has the lower tariff while in 487 cases the United States has the lower tariff. The average difference is slightly greater for the cases where the United States has the lower tariff (4.8 percentage points) versus the case where Canada has the lower tariff (3.9 percentage points). This slight difference in the average size of the adjustment suggests that Canada has a slightly bigger adjustment to make even if the number of tariff changes is slightly smaller.

The most modest of the three streamlining options requires no changes to national tariff rates. Instead, it would involve an agreement to harmonize the classification of tariffs in the two countries. At present, there is a lack of harmonization of tariff classifications after the six-digit level in the two countries. For example, of the 5,062 six-digit HS6 codes, it is in less than half of the cases (2,057, or 41 percent) that both countries have only one tariff line with an *ad valorem* duty. In other cases the numbers of tariff lines could be different or one country could impose an *ad valorem* duty while the other uses a tariff based on quantities imported or fixed dollar amounts. In these cases it is difficult to even compare the tariffs in Canada and the United States. The modest option would harmonize the tariff classifications and thus make it easier to harmonize rates in the future. Common customs declaration processes would also be easier if the same classification systems were used.

## Summary and Conclusions

Academic studies of the effects of border security on Canada-U.S. trade support the concerns expressed regarding trade costs expressed in the “Beyond the Border” declaration. This paper analyzed some of the benefits and costs of three potential policies to implement the streamlining of customs processes envisioned in the February 4 declaration. This analysis provides some guidance to policy makers who seek to put the objectives of the declaration into action.



**Table 1: Regional Variation in NAFTA Utilization Rates (2010 US Imports)**

Utilization		Utilization	
Customs District	Rate	Customs District	Rate
Portland, ME	43%	Seattle, WA	38%
St Albans VT	26%	Great Falls, MT	46%
Ogdensburg NY	33%	Pembina, ND	38%
Buffalo NY	50%	Detroit, MI	66%

**Table 2: Federal Government Reliance on Customs-Related Revenue**

	Canada	United States
Customs Revenue	C\$ 4,055,000,000	\$ 27,445,000,000
(% of Total Federal Revenue)	1.7%	1.07%

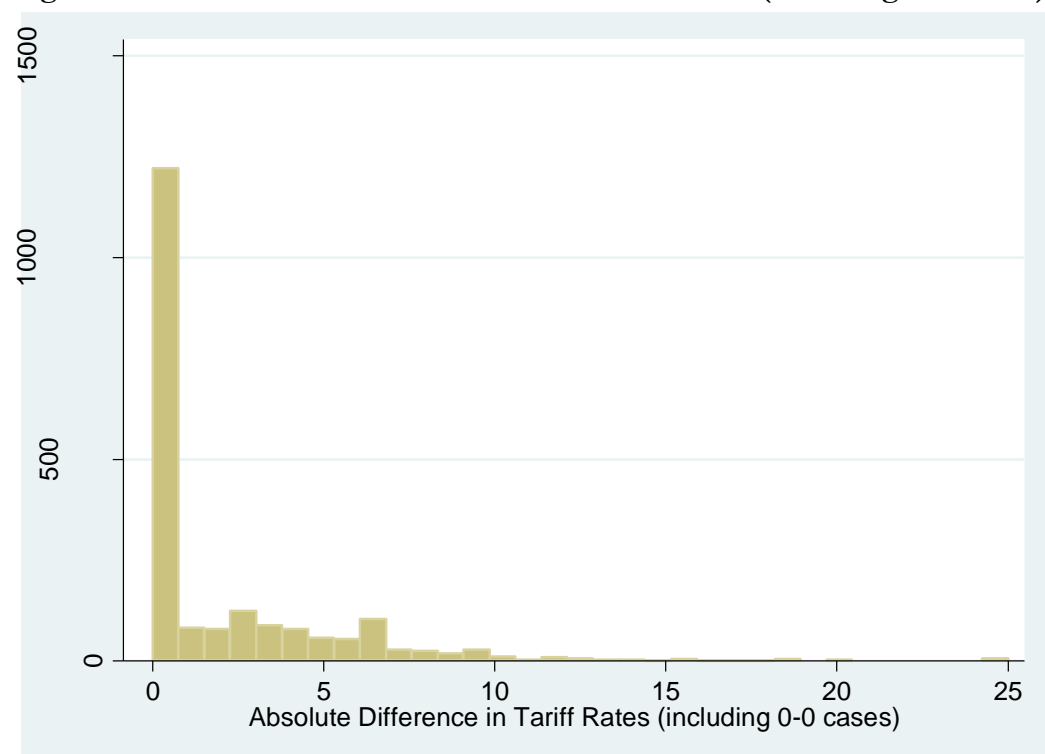
**Figure 1: Differences in Canada-US MFN Tariff Rates (including 0/0 cases)**

Figure 2: Differences in Canada-US MFN Tariff Rates (excluding 0/0 cases)

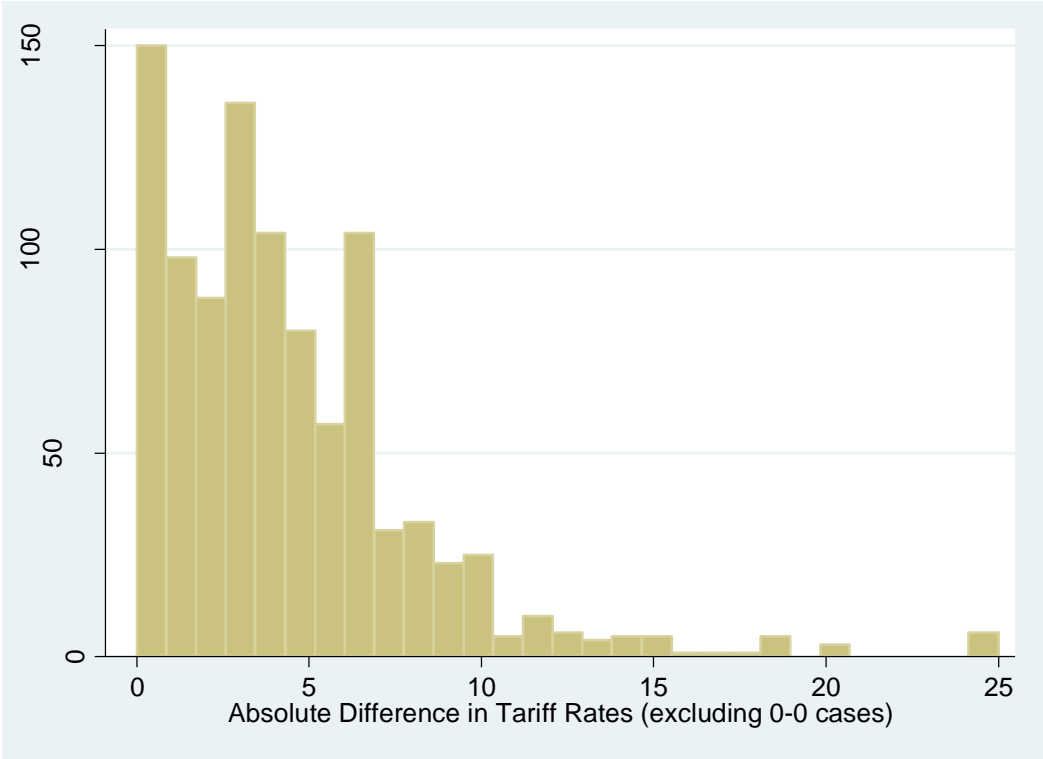
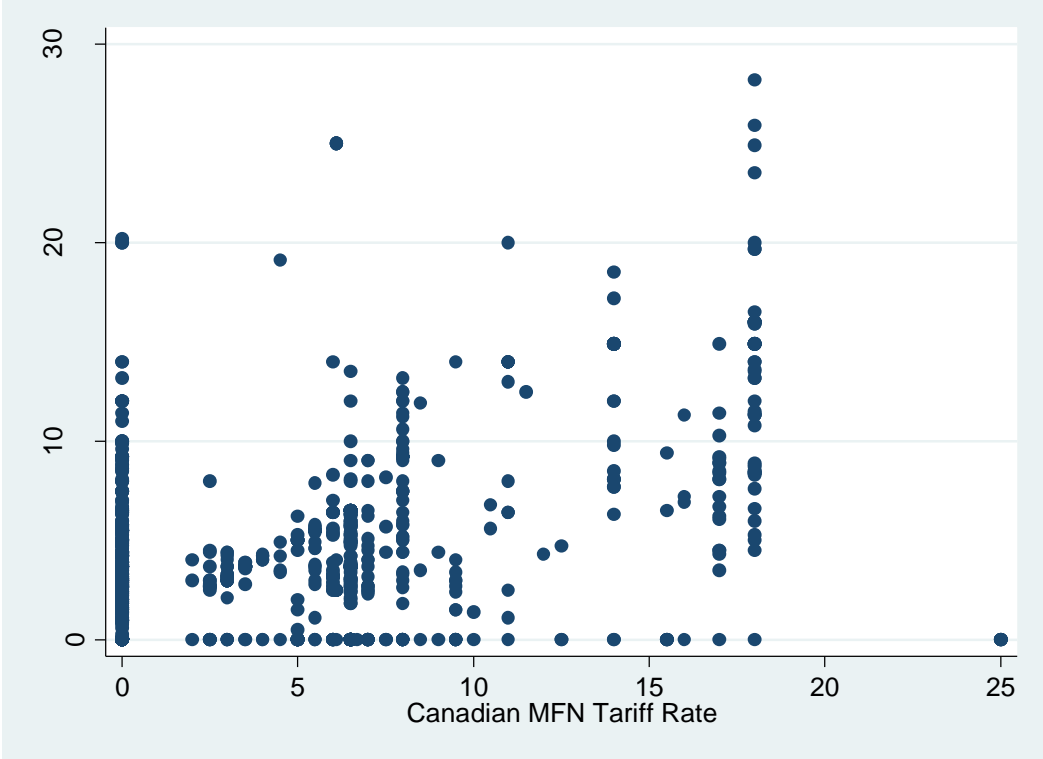


Figure 3: Comparing Canadian and US MFN Tariff Rates



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## Audience Discussion—Storer Paper

**Comment:** In the paper there is a summarization of the cost (in lost tariff revenue) of harmonization. How much thinking has been done about the *benefits* to be gained from efforts to harmonize tariff rates?

**Storer:** There have been studies that look at the issue, predominantly by Canadians. In general, benefits have been estimated on the order of 1 to 2 percent of GDP, which is of a size sufficient to equal the costs.

## *Speaker Biographies*

### **Don Alper**

Donald K. Alper is professor of political science and director of the Center for Canadian-American Studies and the Border Policy Research Institute at Western Washington University. He received his PhD from the University of British Columbia. A recognized leader in the field of Canadian Studies in the United States, his teaching and research interests include American and Canadian politics as well as transboundary political relations related to environmental management and cross border regions.

### **Greg Boos**

Greg Boos is an attorney in the firm, Cascadia Cross Border Law in Bellingham. He is recognized as a pre-eminent attorney in U.S. immigration law with emphasis on business immigration. He holds a JD from the University of Idaho. He is a member of the Washington State Bar Association and the bars of various US Federal courts. He is licensed as a Practitioner of Foreign Law by the Law Society of British Columbia. The International Criminal Court has approved Greg for inclusion on its List of Counsel. Greg holds Adjunct Professor status with Western Washington University. A member of the Vancouver Board of Trade, he sits on its Canada-United States Relations Committee.

### **Jay Brandt**

Jay Brandt recently retired after completion of over 30 years of service with U.S. Customs and Border Protection. Immediately prior to retirement, he was the Assistant Area Port Director (Trade) for the Blaine, Washington, sector ports.

### **Emmanuel Brunet-Jailly**

Emmanuel Brunet-Jailly is an associate professor and the co-director of the Local Government Institute, as well as director of the European Studies Program at the University of Victoria. A highly accomplished scholar of comparative border studies, he is currently co-editor of the *Journal of Borderlands Studies*. He holds an MA in Political Science from the University of Paris 1 Pantheon - Sorbonne and a Ph.D. in political science from the University of Western Ontario.

### **Hugh Conroy**

Hugh Conroy is Project Manager of the International Mobility and Trade Corridor (IMTC) project at the Whatcom Council of Governments (WCOG) in Bellingham, Washington. He is also an Adjunct Research Associate at the Border Policy Research Institute at Western Washington University. From 1997 to 2001 he worked at WCOG as a Research and Policy Analyst. He holds a Master's Degree in Public Policy and Management from Carnegie Mellon University and a Bachelor's Degree in Legal Studies from the University of California, Berkeley.

### **David Davidson**

David Davidson is Associate Director of the Border Policy Research Institute at Western Washington University. He holds a master's degree in public administration from the University of Washington. Prior to working at the Institute, he served for eight years as the City Administrator in Sumas, Washington, a city abutting the Canadian border.

**Chris Gregory**

Chris Gregory is a member of the group working to develop an Action Plan for the Shared Vision for Perimeter Security and Economic Competitiveness, set forth by President Obama and Prime Minister Harper in their Washington Declaration on February 4. Mr. Gregory has been the Director of North American Relations at Public Safety Canada for three years. Previously he held positions at the Privy Council Office, Canada Border Service Agency, was the Departmental Advisor to Deputy Prime Minister Anne McLellan, and worked on the U.S. Desk at the Department of Foreign Affairs. During this time he worked on both the Smart Border Declaration and SPP files. Chris holds a Masters Degree in Public Policy from Concordia University.

**Geoffrey Hale**

Geoffrey Hale is Associate Professor in the Department of Political Science at the University of Lethbridge. A native of Montreal, Quebec, Dr. Hale received an M.B.A. and PhD from the University of Western Ontario (M.B.A., 1978; Ph.D. 1996). Dr. Hale's principal research interests are public policy, particularly the political economy of North American integration, fiscal and budgetary policies (and related issues of public management), and the management of structural policy change.

**Alexander Moens**

Alexander Moens is professor of political science at Simon Fraser University and a Senior Fellow in American Policy at the Fraser Institute in Vancouver, BC. He was a Cadieux Fellow in the Department of External Affairs, Ottawa in 1992 and a visiting fellow at the Center for Hemispheric Studies at the National Defense University in Washington, D.C., in 1999. Dr. Moens current research focuses on immigration and national security issues in Canada-US relations.

**Margaret Stock**

Margaret Stock is adjunct professor in the Department of Political Science at the University of Alaska Anchorage. She holds an MPA from Harvard Kennedy School, a JD from Harvard Law School and Master of Strategic Studies, Army War College. She served in the Military Police Corps, US Army Reserve for 28 years. Professor Stock taught at the US Military Academy, West Point, New York, 2001-2010. She has frequently testified before Congress on issues of immigration and national security. She was a member of the Council on Foreign Relations Independent Task Force on US Immigration Policy. In 2009, Professor Stock was Visiting Fellow at the Border Policy Research Institute at Western Washington University.

**Paul Storer**

Paul Storer is professor and Chair of the Department of Economics at Western Washington University. He holds a PhD from the University of Western Ontario. Prior to joining Western in 1996, he served as an economist for the Bank of Canada and as a faculty member at the University of Quebec at Montreal. Storer's teaching and research interests include macroeconomics, money and banking, labor, and Canadian economic policy and issues.

**Solomon Wong**

Solomon Wong is the Executive Vice President of InterVISTAS Consulting, based in Vancouver, BC. and is responsible for the areas of security, borders and planning. From 2000-02, Mr. Wong helped to author the "Perimeter Clearance Strategy" - a coordinated roadmap to border improvements submitted to both the Smart Borders Action Plan and Security & Prosperity Partnership processes. Most recently, he is doing work measuring the performance of the Canadian Air Transport Security Authority, and looking at issues of equivalency of security processes in Europe, the U.S. and Canada. He is a graduate of the University of British Columbia.

## ***Perimeter Security and the Beyond the Border Dialogue: Perspectives from the PNW-Western Canada Region***

**Monday, June 20, 9:00 AM – 2:00 PM**  
**Alki Room, 3<sup>rd</sup> floor, 1501 4th Ave., Seattle, WA 98101**

9:00 AM – 9:15 AM

### Welcome and Introductory Remarks

Wendy Baldwin, Consul, Consulate General of Canada, Seattle  
Don Alper, Director, Border Policy Research Institute, Western Washington University  
Chris Gregory, Member, Beyond the Border Working Group

9:15 AM – 10:30 AM

### Session I: The Political Context of the Beyond the Border Dialogue

Hugh Conroy, Whatcom Council of Governments & International Mobility and Trade Corridor  
*Declared Perimeter-Goals Will Require Undeclared Approaches*  
Alex Moens, Professor, Department of Political Science, Simon Fraser University; Fraser Institute  
*The Changing Parameters of the Border Action Plan*  
Solomon Wong, VP, Intervistas Consulting Commentator  
*Redefining Borders: From Continental, to Perimeter and Beyond*

10:30 AM – 10:45 AM Break

10:45 AM – 12:00 PM

### Session II: Implementing Change AT the Border

Greg Boos, Attorney, Cascadia Cross-Border Law  
*Consular Processes as an Impediment to Cross-Border Mobility and Economic Integration*  
David Davidson, Associate Director, Border Policy Research Institute  
*A "Leisure Lane" for Canadian and U.S. Citizens*  
Geoffrey Hale, Associate Professor, Department of Political Science, University of Lethbridge  
*Strengthening Operational Cooperation: Joint Facilities and Shared Services*

12:00 PM – 1:00 PM Lunch. Speaker: Chris Gregory, Beyond the Border Working Group

1:00 PM – 2:00 PM

### Session III: Implementing Change AWAY from the Border

Paul Storer, Professor and Chair of Economics, Western Washington University  
*Suggestions for Tariff and Regulatory Simplification*  
Margaret Stock, Adjunct Instructor, University of Alaska Anchorage; US Army (ret.)  
*Canada-US Border Security Cooperation through IBETs*

Commentator: Jay Brandt, Former Asst. Area Port Director (Trade), US Customs and Border Protection

Moderator: Don Alper, Director, Border Policy Research Institute, Western Washington University

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